Supreme Court, U.S.
FILED

No. 041683 APR 5 - 2005

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In The

Supreme Court of the United States

JOHN VEAZEY, TONYA VEAZEY,

Petitioners,

v.

ASCENSION PARISH SCHOOL BOARD, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN VEAZEY, TONYA VEAZEY
40097 Ronda Avenue
Prairieville, Louisiana 70769
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QUESTIONS PRESENTED FOR REVIEW

1) Is the site at which a disabled child is educated an aspect of "placement" according to the Individuals with Disabilities Education Act (IDEA)?

2) Does the IDEA include a presumption in favor of placing a disabled child at the school closest to that child's home and/or at the school that child would attend if nondisabled?

3) Is a Local Education Authority (LEA) obligated under the IDEA to notify the parents of a disabled child before it initiates change in the site at which that child is to be educated?

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

PETITIONERS: John Veazey and Tonya Veazey, 40097 Ronda Avenue, Louisiana 70769.

RESPONDENTS: The Ascension Parish School Board, Susan Vaughn, Barbara LeBlanc, and Shelby Robert

ATTORNEYS FOR THE RESPONDENTS:

- Jeffery P. Diez, GORDON R. CRAWFORD & ASSOCIATES, 324 East Worthey Road, Gonzales, Louisiana 70737-4235
- Ernest L. O'Bannon, 1010 Common Street, Suite 2200, New Orleans, Louisiana 70112-2401

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OPINIONS BELOW

Decision of United States Court of Appeals is not designated for publication but can be found at 121 Fed. Appx. 552 (5th Circuit 2005) and is reprinted in the Appendix at App. 1-3. Decision of U.S. District Court is reprinted in the Appendix at App. 4-11. Order to reopen proceedings by U.S. District Court is reprinted in the Appendix at App. 12. Decision of Second State Level Review Panel is reprinted in the Appendix at App. 13-31. Order to rehear at State Level Review Panel by United States District Court is reported at 109 F Supp. 2d 482 (M.D. La. 2000) and reprinted in the Appendix at App. 32-41. Decision of State Level Review Panel is reprinted in the Appendix at App. 42-57. Due Process Hearing is reprinted in the Appendix at App. 58-76.

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided this case was January 5, 2005. No petition for rehearing was timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This case was originally filed with the United States Supreme Court on April 5, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20 U.S.C. § 1412 (a) (5)

> To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1415 (b) (3) reads:

The procedures required by this section shall include— ...

(3) written prior notice to the parents of the child whenever such agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c) of this section, or the provision of a free appropriate public education to the child;

§ 300.552 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that —

(a) The placement decision —

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.550–300.554;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general curriculum. (Authority: 20 U.S.C. 1412(a)(5)

STATEMENT OF CASE

Factual Background

John Gideon "Buddy" Veazey is currently a 16 year old, deaf tenth grade student who has been attending the school he would attend if nondisabled (home school) since he started the first grade. He is mainstreamed and the only supplementary aid or service he receives is a Cued Speech transliterator. He has a Cochlear implant that allows him to communicate orally.

A Cued Speech transliterator is analogous to a sign language interpreter. The difference is that, whereas sign languages involve representations of either words or concepts, Cued Speech involves visual representations of phonemes.

Buddy is a high achieving student at his home school. His current status and performance level is indicated by the General Student Information section of his most recent Individualized Education Program (IEP) report. A relevant excerpt is:

> John has never repeated any grades and has been served in a general education setting. John scored at the 99th percentile of the Core Total on the ITED (Iowa Test of Educational Development). He also scored at the 99th percentile of the Composite overall level of the ITED. His strengths are in reading comprehension, written language, and vocabulary. John is functioning within the superior range for his chronological age.

Individualized Education Program General Student Information page for John Veazey, October 5, 2004.

Prior to the first grade Buddy was placed in a school other than his home school that shared a building with Ascension Parish's administrative headquarters for special education services. Buddy began attending his home school in Fall 1995. *Hearing Officer Findings and Decision In RE John Gideon Veazey.*

On December 12, 1995, another IEP was agreed upon. The report on that IEP indicates Buddy's assignment to his home school (Prairieville Elementary). *December 12, 1995 Individualized Education Program, cover page.* Buddy was making progress and doing well. *Hearing Officer Findings and Decision In RE John Gideon Veazey.*

During August, 1996, as Buddy was preparing to enter the second grade, the Ascension Parish School system mailed a Site Determination Form to Appellants John and Tonya Veazey. The form indicated that Buddy was assigned to a school (Gonzales Primary) other than his home school "...to receive his/her special education services as determined at his/her IEP meeting on 8/19/96." *August 19, 1996 Site Determination Form.*

The completed form includes an explanation for the selection of the school. It reads, in part, "...the home school does not contain other hearing impaired students using Cued Speech at the 2nd grade level. Gonzales Primary will provide the student with opportunities to communicate using his chosen mode of communication (Cued Speech) with other age-appropriate hearing impaired students, thereby enhancing his communication and social skills." *August 19, 1996 Site Determination Form.*

The Veazeys were not notified prior to the site determination. No IEP meeting pertaining to Buddy had been held since the aforementioned December 12, 1995, session.

Proceedings Below

Appellants John and Tonya Veazey, on behalf of their son John Gideon Veazey, filed a request for a due process hearing contesting the Ascension Parish School Board decision to move their deaf son out of his home school. The hearing officer ruled in favor of the school board while indicating that, "...the transfer of John Gideon Veazey to a cluster or centralized program at Gonzales Primary School is not a change in placement."

The Veazeys appealed the decision to a Louisiana State Level Review Panel which also ruled in favor of the school board while indicating, "While the nearness factor should be taken under consideration, it does not create a presumption in favor of the child."

The Veazeys filed suit in the United States District Court for the Middle District of Louisiana. It was stipulated that the case turned primarily on issues of law and the matter could be resolved summarily. Cross motions for summary judgment were filed.

The Veazeys' motion for summary judgment was granted, in part, based on a finding that the State Level Review Panel included a member who was the first person selected for the original due process hearing in the case but at that time recused himself while citing his own bias in favor of the school system. The District Court matter was dismissed without prejudice and a new State Level Review Panel hearing was ordered.

The second State Level Review Panel ruled in favor of the school board while indicating:

> It is also clear that the type of notice in transfers related to change in school site location does not require the same type of notification when determining the appropriate IEP for the student. Thus, the transfer of John Gideon Veazey to a cluster or centralized program from Oak Grove Primary to Gonzales Primary is not a change in placement.

A motion was filed to reopen the District Court proceedings. The matter was again docketed as cross motions for summary judgment.

The United States District Court rendered judgment in favor of the school board. The decision was appealed to the United States Court of Appeals for the Fifth Circuit.

The Fifth Circuit affirmed the District Court ruling while indicating:

> The gravamen of the Veazeys' complaint is that the School Board's decision to transfer Buddy to the 'cluster' school constituted a change in his 'educational placement' requiring the Board to provide them with prior written notice,[5]... a change in the particular school site at which a disabled student's 'individualized education program' (IEP) is implemented does not constitute a change in 'educational placement.'[6]"
>
> -Footnote 5 reads: "20 U.S.C. § 1415 (b) (3)."
>
> -Footnote 6 reads "See White v. Ascension Parish Sch. Bd., 343 F.3d 373, 379 (5th Cir. 2003) ("Educational Placement', as used in the IDEA, means educational program – not the particular institution where that program is implemented.")."

Throughout the proceedings Buddy has remained at his home schools.

REASONS FOR GRANTING PETITION

The issues here are important federal questions that have not been, but should be, decided by the United States Supreme Court. Some United States Fifth Circuit and Tenth Circuit interpretations with respect to 20 U.S.C. § 1412 (a) (5) are in disagreement with a Notice of Interpretation published by the Executive Branch through the United States Department of Education (DOE). Additionally, the Fifth Circuit's and Tenth Circuit's position with respect to requirements pertaining to the question of presumption in favor of the home school is at odds with a position expressed by the Third Circuit.

Resolution of the questions presented has potential to affect a large number of children across the nation. According to the DOE Office of Special Education Programs (OSEP), "The IDEA serves approximately 6.8 million children and youth with disabilities." *Web Page at http://www.ed.gov/about/offices/list/osers/osep/index.html*

Executive Branch Outlook vs. Circuit Court Outlooks

Any reasonable reading of 34 C.F.R. Sec. 300.552, (1999), promulgated by DOE along with other sections of that regulation to implement 20 U.S.C. § 1412 (a) (5) and entitled "placements," would lead to the conclusion the Executive Branch considers assignment to the home school as opposed to some other facility to be an aspect of placement and that it reads the law as including a presumption in favor of the home school. A continuous excerpt of the relevant language in 34 C.F.R. Sec. 300.552 reads as follows:

> **§ 300.552 Placements.**
>
> In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that—
>
> (a) The placement decision—
>
> (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
>
> (2) Is made in conformity with the LRE provisions of this subpart, including §300.550– 300.554;
>
> (b) The child's placement—
>
> (1) Is determined at least annually;
>
> (2) Is based on the child's IEP; and
>
> (3) Is as close as possible to the child's home;
>
> (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;...

Any remaining doubt about the Executive Branch's interpretation with respect to whether or not the question of assigning a disabled child to his or her home school is a matter of placement as well as the question of presumption in favor of the home school is erased by the DOE's **Notice of**

Interpretation, Appendix A to 34 C.F.R., part 300 (1999). The relevant excerpt of that Notice is:

> Even though IDEA does not mandate regular class placement for every disabled student, IDEA ***presumes*** that the first placement option considered for each disabled student by the student's placement team, which must include the parent, is the school the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. Thus, before a disabled child can be placed outside of the regular educational environment, the full range of supplementary aids and services that if provided would facilitate the student's placement in the regular classroom setting must be considered. Following that consideration, if a determination is made that particular disabled student cannot be educated satisfactorily in the regular educational environment, even with the provision of appropriate supplementary aids and services, that student then could be placed in a setting other than the regular classroom.

(Emphasis supplied.)

Thus, the Notice of Interpretation indicates that the IDEA "presumes" in favor of the home school. It also clearly identifies the school the child would attend if not disabled as an integral part of the "first placement option" and thereby clearly establishes the question of site as an aspect of placement. Finally, by first describing the presumptive placement as including placement in the home school then immediately presenting requirements for "removal from the regular educational environment," the language reflects the opinion that the home school is part of the "regular educational environment."

As noted in "Proceedings Below," the Fifth Circuit held in the ruling being appealed here that "...site at which a disabled student's 'individualized education program' (IEP) is

implemented does not constitute a change in 'educational placement.' That observation was footnoted to **White v. Ascension Parish Sch. Bd.** 343 F.3d 373 (5th Cir. 2003).

The Fifth Circuit has also held, in a case referenced in the decision being appealed here, "It must be emphasized that the proximity preference or factor is not a presumption that a disabled student attend his or her neighborhood school." ***White v. Ascension Parish Sch. Bd. 343 F.3d 373 (5th Cir. 2003) (quoting Flour Bluff Indep. Sch. Dist. v. Katherine M., 91 F.3d 689, 693(5th Cir. 1996))***.

While the Tenth Circuit has indicated, "Accordingly, we hold that there is no presumption of neighborhood schooling; either in the IDEA or its implementing regulations." ***Murray v. Montrose County School Dist., 51 F.3d 921 (10th Cir. 1995)***.

But, as indicated above, in the quote from **Notice of Interpretation**, Appendix A to 34 C.F.R., part 300 (1999), the Executive Branch agency that wrote the implementing regulation holds the opposite view.

Thus, there is a clear difference in outlook between at least Circuit Courts and the DOE.

Differences Between Circuit Courts

As noted above in "Executive Branch Outlook vs. Circuit Court Outlooks," both the Fifth and Tenth Circuits have held that the IDEA includes no presumption in favor of the neighborhood school. Additionally, the Tenth Circuit has noted, "To the extent the Third Circuit has expressly held in *Oberti* that the IDEA encompasses a presumption of neighborhood schooling, we disagree." ***Murray v. Montrose County School Dist., 51 F.3d 921 (10th Cir. 1995).***

In taking the position described by the Tenth Circuit language above, the Third Circuit has stated:

> We also note that the federal regulations under the Act require states to ensure that each disabled child is placed "as close as possible to the child's home," and unless some other arrangement is necessary,

> that the child is educated "in the school which he or she would attend if not handicapped." 34 C.F.R. § 300.552. There is thus a presumption in favor of placing the child, if possible, in the neighborhood school, and if that is not feasible, as close to home as possible.

***Oberti v. Board of Educ.**, 995 F.2d 1204 (3rd Cir. 1993) n. 31.*

Thus, it is explicitly stated by the Tenth Circuit that it disagrees with the Third Circuit with respect to the question of whether or not the IDEA includes a presumption in favor of the home school. Additionally, it is apparent that the Third Circuit also disagrees with the Fifth Circuit.

Statutory Language

20 U.S.C. § 1412 (a) (5) reads:

> To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

It is reasonable to interpret "regular" in the Statute as referring to circumstances typically encountered by children who are not disabled. Therefore, it is reasonable to interpret "regular educational environment" as being in a mainstream class at the school a child would attend if not disabled. At least one Circuit Court has rejected that argument. ***Murray vs. Montrose County School District**, 51 F.3d 921 (10th Cir. 1995).* But such rejection by a circuit court does not, of course, preclude the Supreme Court from revisiting the issue while contemplating possible dominant societal and even Congressional beliefs with respect to whether or not

unnecessarily removing a child from his or her home school and thereby removing them from the school-community connection most children enjoy is maintaining a "regular educational environment."

20 U.S.C. § 1415 (b) (3) reads:

> The procedures required by this section shall include— ...
>
> **(3)** written prior notice to the parents of the child whenever such agency—
>
> **(A)** proposes to initiate or change; or
>
> **(B)** refuses to initiate or change; the identification, evaluation, or educational placement of the child, in accordance with subsection (c) of this section, or the provision of a free appropriate public education to the child;

Under the premise that a site is an aspect of placement that requirement is violated when an Education Authority changes the school to which a student is assigned without notifying the child's parents.

THIS CASE AS ILLUSTRATION

This case illustrates the need for Supreme Court involvement to establish at least *some* judicial oversight with respect to regulatory requirements favoring the home school. The IEP in effect for Buddy when the Ascension Parish School Board decided to move him from his home school was designed for and successfully implemented at that home school. (see **Statement of Case, Factual Background**). The situation could not possibly be construed as triggering the 34 C.F.R. scc 300.552 exception for cases where "...the IEP of a child with a disability requires some other arrangement."

Moreover, it is self evident that none of Buddy's IEPs in effect since the beginning of his first grade year have required an arrangement other than his home school. The school board has implemented them at his home schools with

marked success for nearly ten years. (see **Statement of Case, Factual Background**).

The fact that Circuit Court jurisprudence allows such complete deference to a Local Education Authority in the face of such evident disregard for 34 cc 300.552, even after the DOE issued **Notice of Interpretation**, Appendix A to 34 C.F.R., part 300 (1999) to emphasize a presumption in favor of the school a disabled student would attend if not disabled, is a manifestation of a general circumstance calling for Supreme Court assessment.

CONCLUSION

For these reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,
John Veazey, Tonya Veazey
Date: 10 June 2005

(FILED January 5, 2005)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30109
Summary Calendar

JOHN VEAZEY; TONYA VEAZEY,
Plaintiffs-Appellants,

Versus

ASCENSION PARISH SCHOOL BOARD; ET AL.,
Defendants,

ASCENSION PARISH SCHOOL BOARD,
Defendant-Appellee.

Appeal from the United States District Court
For the Middle District of Louisiana
USDC No. 98-CV-377-C

Before JOLLY, HIGGINBOTHAM, and BENAVIDES, Circuit Judges.

PER CURIAM:*

John and Tonya Veazey appeal the district court's grant of summary judgment to the Ascension Parish School Board in this case, which was brought pursuant to the Individuals with Disabilities in Education Act (IDEA) and the Louisiana Exceptional Children's Act

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*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(LECA).[1] The Veazeys argue that the Ascension Parish School Board violated the substantive and procedural requirements of these acts by transferring their deaf minor son, Buddy, from his neighborhood school three miles from their home to a "cluster" school seven miles from their home. This transfer required Buddy to ride a special school bus used to transport disabled children instead of a regular school bus, and required him to share a transliterator with another hearing impaired student instead of having a private transliterator.

We review a grant of summary judgment *de novo*.[2] "When an action is brought under the IDEA, our inquiry is two-fold: (1) whether 'the [IEP] developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits'; and (2) whether the school district has 'complied with the procedures set forth in the [IDEA].'"[3] "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more."[4]

The gravamen of the Veazeys' complaint is that the School Board's decision to transfer Buddy to the "cluster" school constituted a change in his "educational placement," requiring the Board to provide them with prior written notice.[5] Because notice was provided only after the decision

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[1]The Veazeys cite to but do not substantively argue LECA. Thus, we will only consider their claims under the IDEA. *See L&A Contracting Co. v. S. Concrete Servs., Inc.*, 17 F.3d 106, 113 (5th Cir. 1994) (finding that an issue inadequately briefed is considered abandoned on appeal).

[2]*Threadgill v. Prudential Sec. Group, Inc.*, 145 F.3d 286, 292 (5th Cir. 1998).

[3]*White*, 343 F.3d at 378 (quoting *Rowley*, 458 U.S. at 206-07) (alterations made in *White*).

[4]*Id.* (quoting *Rowley*, 458 U.S. at 207) (internal quotation marks omitted).

[5]20 U.S.C. § 1415 (b) (3).

to transfer Buddy was made, the Veazeys contend that their rights under the IDEA were violated.

The Veazeys have not shown that the School Board's actions were improper. First, a change in the particular school site at which a disabled student's "individualized education program" (IEP) is implemented does not constitute a change in "educational placement."[6] Second, Buddy's IEP did not require the provision of a personal transliterator. Third, requiring Buddy to ride the special bus for disabled children instead of the regular bus did not effect a fundamental change in his IEP.[7] Lastly, we can find no evidence that these changes in any way alter the fact that Buddy's IEP is reasonably calculated to enable him to receive educational benefits by providing him with the "requisite basic floor of opportunity."[8]

Accordingly, the Veazeys have not shown that the district court erred in granting the School Board's motion for summary judgment.

AFFIRMED.

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[6] *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir. 2003) ("'Educational placement', as used in the IDEA, means educational program – not the particular institution where that program is implemented.").

[7] *See Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992) ("An educational placement, for the purposes of the EAHCA [IDEA's predecessor], is not changed unless a fundamental change in, or elimination of, a basic element of the educational program has occurred."); *DeLeon v. Susquehanna Conty. Sch. Dist.*, 747 F.2d 149, 154 (3rd Cir. 1984) (finding that a change in method of transportation did not constitute a change in placement).

[8] *White*, 343 F.3d at 378.

(FILED 04 JAN-5 PM 4:18)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JOHN VEAZEY & TONYA VEAZEY CIVIL ACTION
VERSUS
ASCENSION PARISH SCHOOL BOARD, STATE OF LOUISIANA, BARBARA LEBLANC, SUSAN ROBINSON & SHELBY ROBERT NO. 98-377-C

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter is before the court on cross motions for summary judgment. There is no need for oral arguments. Subject matter jurisdiction is based on federal question, 28 U.S.C. § 1331.

FACTUAL BACKGROUND

The court adopts as its own the following recitation of facts as set forth in the august 2, 2000 Order by Judge Polozola:

> John and Tonya Veazey filed this action individually and on behalf of their minor son, John Gideon Veazey ("Buddy") challenging the decision of Ascension Parish School Board to transfer Buddy to Gonzales Primary School in Ascension Parish.
>
> Buddy Veazey is a profoundly deaf child who has had the use of cochlear implants

Date Docketed	**INITIALS**	**DOCKET #**
JAN 5 2004	s/BS	87

Notices Mailed To:

s/RET s/Neil
s/NL s/Diez
s/CN s/O'Bannon
s/JP

since the age of two years. These implants permit Buddy to communicate orally with members of his family as well as his school mates.

In addition to these implants, Buddy makes use of a technique known as "cued" speech which uses hand signals in conjunction with mouth movements to represent the phonetic sounds of the spoken language. As a part of his education, Buddy has made use of a "cued" speech transliterator who assists him in his use of cued speech during classes at school.

John and Tonya Veazey challenge the decision made by the Ascension Parish School Board to enroll Buddy at the Gonzales Primary School as opposed to Oak Grove Primary School, a school located closer to his home. In early August of 1996, the School Board notified the Veazeys that Buddy would continue to attend Oak Grove Primary School which, according to the plaintiffs, is the school that Buddy would have attended absent his disability. Buddy attended Oak Grove from 1995-1996. In late August, 1996, the School Board verbally informed the Veazeys that Buddy had been transferred to Gonzales Primary to be clustered with other "cued" speech students and to facilitate his use of a "cued" speech transliterator. The Veazeys were further told that placing Buddy at Gonzales Primary would benefit Buddy and improve his lip reading skills. The School Board memorialized this decision by sending a "site selection" form to the Veazeys which was dated August 19, 1996. The form indicated that Gonzales Primary would

> provide "the communication with other age-appropriate hearing impaired students, thereby enhancing his communication and social skills.
>
> Pursuant to the provisions of the IDEA and the LECA, the Veazeys requested a due process hearing to consider Buddy's school placement. The hearing was held on October 14, 15, and November 14, 1997 to consider the School Board's decision regarding Buddy. The hearing officer rendered a decision on December 12, 1997, and ruled that "although the child was receiving appropriate aides and services in his neighborhood school environment; and although he was making satisfactory progress in that environment, the school board had absolute discretion to decide what school the child should attend." The Veazeys appealed the decision to a state level appellate panel, pursuant to state regulations related to the LECA. Further, the hearing officer held that the IDEA and the regulations pertaining to it, did not prevent the school board from transferring Buddy to Gonzales Primary. The panel upheld the hearing officer's ruling. (Footnotes omitted.)

The Veazeys filed suit in federal court, seeking review of the administrative decision, as well as asserting violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the Rehabilitation Act (Section 504), 29 U.S.C. § 794; 42 U.S.C. § 1983; and state laws claims—International Infliction of Emotional Distress, violation of LSA-R.S. 17:111 and LSA-R.S. 17:1944(B)(14). Subsequently, cross motions for summary judgment were filed by the Ascension Parish School Board ("School Board") and the Veazeys. After a

hearing on the cross motions for summary judgment, the court issued an order granting the Veazeys' motion for summary judgment, to the extent of ordering a new administrative hearing, but in all other respects, both motions for summary judgment were denied without prejudice. Sometime thereafter, a new administrative hearing was held and the State Level Review Panel upheld the hearing officer's findings. Through a motion to reopen the case, the Veazeys again seek relief in federal court. After granting the motion to reopen the case, the Ascension Parish School Board and the Veazeys again filed the cross motions for summary judgment now pending before the court.

SUMMARY JUDGMENT

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1]

The party seeking summary judgment bears the initial burden of setting forth the basis for its motion and identifying the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.[2] The moving party may discharge its' burden by showing or pointing out to the court that there is an absence of evidence to support the non-moving party's case.[3] Once a proper motion has been made, the non-moving party may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts showing the existence of a genuine

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[1] See Fed. R. Civ. P. 56(c).

[2] **Celotex Corp. v. Catrett**, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[3] **Id.** at 325.

issue of fact for trial.[4] The non-moving party must come forward with evidence which establishes each element for which that party bears the burden of proof at trial. Summary judgment is mandated if the nonmovant fails to make a showing sufficient to establish the existence of an element essential to its case on which it bears the burden of proof at trial.[5]

STANDARD OF REVIEW

The courts' role under the IDEA is purposefully limited as stated:

> Congress left the choice of educational policies and methods where it properly belongs—in the hands of the state and local school officials. Our task is not to second guess stated and local policy decisions; rather it is the narrow one of determining whether the state and local school officials have complied with the Act.[6]

The United States Supreme Court set forth the scope of review of administrative proceedings pursuant to IDEA in the case of Board of Education v. Rowley, 458 U.S. r176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), stating the following:

> [A] court's inquiry in suits brought under § 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the

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[4]**Id.** at 322-23.

[5]**Celotex**, 477 U.S. at 322.

[6]**White v. Ascension Parish School Board**, 343 F.3d 373, 377 (5th Cir. 2003), citing **Flour Bluff Indep. Sch. Dist. v. Katherin M.**, 91 F.3d 689, 693 (5th Cir. 1996).

> State has complied with the obligations imposed by Congress and the courts can require no more.

The burden of proof is on the party seeking to overturn the administrative decision.[7]

After a thorough review of the record in this case, the court concludes that the factual findings and conclusions of law made by the administrative hearing officer and State Level Review Panel were correct. Neither the IDEA nor state law precludes Ascension from selecting the centralized school site for the implementation of Buddy's IEP, notwithstanding parental input to the contrary. **White v. Ascension Parish School Board**, 343 F.3d 373, 383 (5th Cir. 2003). Having found that the Ascension Parish School Board actions were not precluded by state law, the court finds no violations of the IDEA, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, and Section 1983. Because of the court's finding, the court does not find that the Veazeys have set forth any evidence to support a claim for intentional infliction of emotional distress.

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[7]**Hampton School District v. Dobrowiski**, 975 F.2d 48, 54 (1st Cir. 1992).

Therefore, the Motion for Summary Judgment filed by the Ascension Parish School Board is GRANTED on the issue of site selection and all other grounds raised in the motion.[8] The Motion for Summary Judgment filed by plaintiffs, John and Tonya Veazey, is DENIED.

Baton Rouge, Louisiana, this 5th day of January 2004.

s/Ralph E. Tyson, Judge
RALPH E. TYSON, JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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[8]The Veazeys also argued that the Ascension School Board was required to provide them with prior notice of the school site selection. Ascension asserts that no prior written notice is required for the transfer of a student from one school to another because it was not a change in educational placement. The court agrees. Buddy's transfer was a change in school to a centralized school. The Centralized school provided substantially similar classes as Buddy's neighborhood school and the same IEP was implemented at the centralized school for Buddy. Under these circumstances, the court does not find that the change in schools was a change in educational placement requiring notice under the IDEA, but was merely a change in site selection. Thus, this argument lacks merit.

(FILED 2004 JAN-B P 1:07)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JOHN VEAZEY, ET AL

CIVIL ACTION

VERSUS

NO. 98-377-C

ASCENSION PARISH SCHOOL BOARD, ET AL

JUDGMENT

For the written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of defendant Ascension Parish School Board is hereby GRANTED and this action is hereby dismissed.

All other pending motions in this action are hereby dismissed, as moot.

Baton Rouge, Louisiana, January 6, 2004.

s/Ralph E. Tyson
RALPH E. TYSON
UNITED STATES DISTRICT JUDGE

Date Docketed	**INITIALS**	**DOCKET #**
JAN 6 2004	s/BS	88

Notices Mailed To:

s/ RET s/BS s/O'Bannon
s/NL s/EOM
s/CN s/Neil
s/JP s/Diez

(FILED Date Illegible)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

JOHN VEAZEY AND	**CIVIL ACTION NO.**
TONYA VEAZEY	**98-377-B-M2**
VS.	
ASCENSION PARISH	**JUDGE: POLOZOLA**
SCHOOL BOARD,	**MAGISTRATE JUDGE: M2**
STATE OF LOUISIANA,	**CHRISTINE NOLAND**
BARBARA LEBLANC,	
SUSAN ROBINSON and	
SHELBY ROBERT	

ORDER

The motion of Plaintiff's, JOHN VEAZEY, and TONYA VEAZEY considered, the Order administratively closing this matter is hereby recalled, and this matter is reopened for further proceedings.

Ordered and signed this 11 day of May 2001, at Baton Rouge, Louisiana.

By: s/Frank J. Polozola
Hon. Frank J. Polozola, Chief Judge
United States District Court,
Middle District of Louisiana

DKT 10 & ENTERED	**INITIALS**	**DOCKET #**
DATE 5/14/01	s/BP	59

NOTICE MAILED TO:

s/FJP	s/BP
s/KC	s/PAH
s/CN	s/Veazey
s/JP	s/Diez
	s/O'Bannon

DATE_____ BY s/BP

STATE LEVEL REVIEW PANEL DECISION
IN RE:
JOHN GIDEON VEAZEY
VS
ASCENSION PARISH SCHOOL BOARD

STUDENT'S NAME/AGE/ADDRESS:
JOHN GIDEON VEAZEY
9 YEARS OLD
40097 RONDA AVE.
PRAIRIEVILLE, LA. 70769

CURRENT SCHOOL/GRADE:
OAK GROVE ELEMENTARY
"STAY PUT"

EXCEPTIONALITY:
PRIMARY:HEARING IMPAIRED

I. PARTICIPANTS

HEARING OFFICER:	MADELINE S. CARBONETTE ATTORNEY AT LAW 7354 ALBERTA DRIVE BATON ROUGE, LA. 70808
PARENTS:	JOHN L. VEAZEY TONYA VEAZEY 40097 RONDA AVENUE PRAIRIEVILLE, LA. 70769
ATTORNEY FOR PARENTS:	PAUL L. VEAZEY ATTORNEY AT LAW P. O. BOX 2900 LAKE CHARLES, LA. 70602-2900
REPRESENTATIVE OF ASCENSION PARISH SCHOOL BOARD	SUSAN ROBINSON DIRECTOR OF SPECIAL ED. ASCENSION PARISH SCHOOL BOARD

II. WITNESSES AT HEARING

Roger Clouatre
Ascension Parish School Board
Susan Robinson
Special Education Director
Ascension Parish School Board
Ina Smiley
Employee in Con. Billy Tauzin's Office
Sadie Apparel
Parent of Hearing Impaired Child
Mary L. Smith
Member of Association of the Deaf
Terrance White
Parent of Hearing Impaired
Shelby J. Robert
Superintendent
Ascension Parish School Board
Leslie Fatherree
Parent of Hearing Impaired Child
Paula Barbera
Supervisor Special Education
Ascension Parish School Board
Wendy Sheets
Transliterator
Ascension Parish School Board
June Street
Louisiana Department of Education
Barbara LeBlanc
Ascension Parish School Board
Gina Monique Madere
Parent of Hearing Impaired Child
John Gideon Veazey
Child

John E. Veazey
Father of Child
Tonya Veazey
Mother of Child

III. STATEMENT OF JURISDICTION

This is an appeal of the decision of the Due Process Hearing of John Gideon Veazey before the State Level Review Panel pursuant to the provisions of Louisiana Revised Statutes 17:513 et seq. (The Exceptional Children's Act). The due process hearing was held on October 14, 1997 and October 15, 1997 and continued to November 24, 1997. The due process hearing was opened to the public. A decision was rendered by the Due Process Hearing Officer on December 22, 2000 favorable to the Ascension Parish School Board. The Parents appealed the decision of the Hearing Officer before a State Level Review Panel. The Panel affirmed the decision of the Ascension Parish School Board, which was appealed to the Federal District Court for the Middle District of Louisiana. The Judge of the United States District Court granted the Parents' Motion for Summary Judgment and ordered a new Administrative Hearing. This matter is again before the State Level Review Panel pursuant to the order of the United States District Court and by joint agreement of the parties to waive another hearing before the Due Process Hearing Officer and proceed with the review of the decision of the Hearing Officer by the State Level Review Panel.

IV. BASIC INFORMATION

John Gideon Veazey is the nine-year-old son of Mr. John E. Veazey and Mrs. Tonya Veazey, John Gideon Veazey was deaf at birth and when he reached the age of two (2) years old, he had a Cochlea Implant which allowed him to hear sounds. He was evaluated and approved for Special Education services. His primary exceptionality was determined to be Hearing Impaired. Prior to attending Oak Grove Primary School (his home based school) where he was

mainstreamed in a regular class during the school year of 1994-95, John Gideon Veazey attended pre-school in a cluster type program at Gonzales Primary School. However, during the summer of 1996, the Ascension Parish School System adopted a policy, administratively, to cluster all cued speech children. The Veazeys, as were other parents of cued speech students, were notified in writing and by telephone of the decision of the Ascension Parish School System to cluster all cued speech transliterator students. The parents of John Gideon Veazey disagreed with the administrative policy of the Ascension Parish School System which resulted in the transfer of their son to Gonzales Primary School along with other special education students receiving cued speech and the use of a cued speech transliterator with another student at Gonzales Primary School. The parents disagreed with the cued speech transliterator being shared with other cued speech students, which resulted in a decrease in its use by their John Gideon Veazey when shared with other students, and because of the progress he had been making with the exclusive use of the Cued Speech Transliterator. Additionally, John received support services in a resource room at his home based school, Oak Grove Primary. John and Tonya Veazey filed a request for a due process hearing on August 26, 1996. Pending the due process hearing and throughout this appeal, a "Stay Put" order was put into effect and John Gideon Veazey remained at Oak Grove Primary School with an individual cued speech transliterator and his continued support services.

This matter is before the State Level Review Panel pursuant to an order by the Honorable Frank J. Polozola, Chief Judge of the United States district court for the Middle District of Louisiana entered on August 1, 2000. The Court ordered a new administrative hearing to be held and that a new Hearing Officer and a Three-Person Review Panel shall be appointed to hear and/or review the special education due process request of the parents of John Gideon Veazey. The court further ordered that the Hearing Officer and Panel not

be constituted with any persons who have served as either Hearing Officers or as members of a prior "Three Person Review Panel" on the Veazey due process matter. The Judge further ordered that the Hearing Officer and/or Panel shall follow the guidelines and procedures set forth by State and Federal law in reviewing this case.

The State Level Review Panel set this matter for a hearing on March 28, 2001 at 2:00 O'clock P.M. On the day of the hearing, the parties requested a conference before proceeding with the hearing and during the conference with the Panel, the parties indicated their desire to waive their right to the hearing before a Due Process Hearing Officer and to allow the Hearing Officer's decision, as rendered, to be appealed and be heard by this impaneled State Level Review Panel. The parties also waived the thirty (30) day timeline schedule because of medical problems associated with counsels and requested the hearing before the Panel be continued, and that they be given additional time to submit memorandums in support of the positions of their clients on the appeal.

The hearing was continued by agreement of the parties and rescheduled to the 19th day of April, 2001, at 9:30 o'clock A.M. (SEE ATTACHED HEARING TRANSCRIPT).

This matter now comes before the State Level Review Panel for review of the decision of the Due Process Hearing Officer issued on December 22, 1997.

V. ISSUES ON REVIEW BY THE PANEL

The Appeal and Request for Review of the Parents involves the following primary issues. There are other issues raised which will also be addressed in the opinion while addressing the basic issues listed below:

1. Whether or not the Hearing Officer erred in finding the Ascension Parish School System acted proper in the transfer of John Gideon Veazey from

his home based school and finding sufficient notice, although an I.E.P./Placement Meeting was not convene, or without inviting any input from the parents?

2. Whether or not the Hearing Officer erred in finding that John Gideon Veazey was not denied a free appropriate public education (FAPE), as a result of grouping their child with another deaf child who was allegedly on a pre-kindergarten language development and usage level and sharing the same Cued Speech Transliterator with this child, and requiring John Gideon Veazey who was mainstreamed to ride on a special education bus with non-impaired children?

3. Whether or not the Hearing Officer erred in finding that the School System had the authority for student school site placement purpose to reassign John Gideon Veazey, a cued speech transliterator student, to a school cluster with other cued speech transliterator students at a site location seven (7) miles from his home rather than the child's home based school which is only three (3) miles from his home?

VI. SUMMARY OF APPLICABLE LAW

The issues raised on the appeal filed by the Parents of John Gideon Veazey are primarily controlled by Louisiana Revised Statutes 17:1941 et seq. (the Education Opportunities For Exception Children's Act); Louisiana Department of Education Bulletin 1706 (Regulations for

Implementation of the Exceptional Children's Act); Louisiana Department Bulletin 1530 (Louisiana I.E.P. Handbook); United States Cod Title 20:1401 et seq., (the Education of the Handicapped Act); 34 C.F.R. Section 300.552 (Educational Placement); and the various reported cases interpreting said statutes and regulations.

VII. FINDING OF FACTS

John Gideon Veazey, born on July 190, 1998, is the son of John E. Veazey and Tonya Veazey. He was nine (9) years old and at the time of the due process hearing, he was in the 3rd grade attending his neighborhood school at Oak Grove Primary School, which is approximately three (3) miles from his residence on a "Stay Put" order. John Gideon Veazey is a deaf child and has been evaluated and classified as disabled under the provisions of the Individuals with Disabilities Education Act (IDEA) and the Louisiana Education of Handicapped Children Act (La. R.S. 17:1941, 35 seq.). He received a cued speech transliterator to assist him with his hearing disability and other resources for the hearing impaired and was in a regular classroom making progress, and doing well at Oak Grove Primary School. There were no other hearing impaired children in his class at Oak Grove Primary School.

In August, 1996, the parents of John Gideon Veazey were informed that their son, as were other hearing impaired children in Ascension Parish Schools using cued speech transliterators, were going to be transferred to schools to a clustered environment and that their son would be transferred to Gonzales Primary School during the 1996-97 school year. While at Oak Grove Primary School, John Gideon Veazey was given an individual cued speech transliterator, but would be required to share one with another student upon his attendance to Gonzales Primary School, which is approximately seven (7) miles from the Veazey's residence compared to the three (3) miles from his home school he was attending. The parties stipulated that the testimony of Sheila Savioe would be "John Gideon Veazey would have been at

Gonzales Primary School for the 2nd grade and would have shared a transliterator with Jonathan Crappel, if he had been transferred in the 1996-97 school year. Additionally, John Gideon Veazey did not require any academic assistance, but does go to a resource room for auditory training. the testimony indicates that the Ascension Parish School Board made the change in site location because they believed that cued speech children need the opportunity to interact with other hearing impaired children, as well as the other members of their peer group. The School System also believed that clustering the cued speech students would give them the opportunity to centralize services involving cued speech transliterators. John Gideon Veazey's services contained in his I.E.P. of December 12, 1996, was not changed, except he would be required to ride a special education bus and he would share a cued speech transliterator with another student, which was different from the individual cued transliterator he was receiving at Oak Grove Primary School. The I.E.Ps of December 12, 1996 and May 23, 1997, however, did not specifically require the cued speech transliterator to be individualized. It should also be noted that the testimony indicated that other School Systems in the State of Louisiana clustered low incident disabilities similar to clusters formed by the Ascension Parish School System.

VIII. APPLICABLE LAW

The Education of the Handicapped Act (20 USC Sec 1401 et seq.) requires participating state and local educational systems to assure that handicapped children are guaranteed certain procedural safeguards that will ensure the child a free appropriate public education (FAPE) in the least restrictive environment. Additionally, 34 C.F.R. Section 300.552 provides in pertinent part "the educational placement of each child with a disability is based on his IEP and should be as close to the child's home as possible". Thus, a child must be educated in the school that he or she would attend if not disabled, unless the IEP of the child with a disability requires some other arrangement. Also, while the regulations require

a School Board to take into account the geographical proximity of the placement, there is no absolute obligation of a School Board to place a child in his base school. This act further states that following the determination of the child's educational program, the local school district must attempt to make every effort to place the student in the "Least Restrictive Environment".

In a 5th Circuit case, **Flour Bluff Independent School District** v. **Katherine M.**, 91 F.3rd 689 (5th Cir. 1996), the court stated that "Congress left the choice of educational policies to methods where it properly belongs – in the hands of state and local school officials". The Court further stated that IDEA expressly authorizes school districts to utilize regional day schools. The State of Louisiana recognized its obligation to comply with Federal regulations and as a result thereby enacted Louisiana Revised Statute 17:1941 et seq., (the Educational Opportunities for Exceptional Children's Act).

Section 1944 (c) of the Educational Opportunities for Exceptional Children's Act provides:

> "c. To make the most effective use of human and fiscal resources available for special education and related services, the Department of Education, with the approval of its governing authority, shall issue regulations with regard to this chapter. These regulations shall be written in cooperation with representatives from other state and private agencies involved in special education services, parish and city school boards, teachers of children receiving special education services, regular classroom teachers, universities and colleges, non-public schools providing representatives of recipients of special education and related services and their families."

In further complying with the Education of the Handicapped Act, the State Department of Education promulgated the Department of Education Bulletin 1706 (Regulations for Implementation of the Exceptional Children's Act), and Section 402 of Bulletin 1706 defines "Free appropriate Public Education" (FAPE) as follows:

Section 402. Definitions

A. Free Appropriate Public Education (FAPE)

1.) "Appropriate public education" means all special education and related services provided each exceptional child which—

a. Meet State Board Standards, including these Regulations and all applicable bulletins approved by the State Board (i.e., Bulletin 741, Bulletin 746, Bulletin 1508).

b. Are provided in conformity with an IEP at public expense, under public supervision and direction and without charge, including preschool, elementary school, or secondary school education.

2.) The term "free" means without charge, including the following:

a. Cost of all room, board, and non-medical care provided when residential educational placement is necessary.

b. Costs for an independent (not necessarily private) individual evaluation conducted by the school system either fails to initiate a hearing or fails to prevail in a hearing to show that its evaluation is appropriate, or when an independent educational evaluation is requested by a hearing

> officer, the Department's Special Education Panel, or a court of competent jurisdiction.

A "free appropriate public education" requires a school district to have a program with requirements that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. (**Board of Education vs. Rowley**, 458 US 176, 200, 192 S. Ct. 3034, 3078, 72 L.Ed2d 690 (1982); **Alamo Heights Independent School District vs. State Board of Education**, 790 F2d 1153, (5th Cir 1986). The term free appropriate public education has also been interpreted by the United States Supreme Court in the **Rowley case supra.** as follows:

> "A free appropriate public education consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." It does not require states to provide each child with the best possible education at public expenses.

In addition to a free appropriate education, the state is required to offer special related services as defined in state Bulletin 1706, which states:

> "Related Services are defined as transportation and such developmental, corrective, and other supportive services as are required to assist an exceptional child to benefit from special education, related services and audiological services, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, interpreter services, orientation and mobility training. The term also includes health services, social work services in school, and parental counseling and training. In the educational system, related services are provided only when it can be documented that the student needs

> requires the services to benefit his/her special education program. The majority of the related services provided in the educational setting are interventions in the form of therapy, such as speech, occupational or physical therapy, and counseling. The focus of therapies provided in the educational environment are different from those provided in a hospital, clinical or rehabilitative setting".

In **Rowley**, the Supreme Court also held that in order to determine if a school district has met its obligation to provide all handicapped students with a free appropriate public education, the courts must engage in a two-part inquiry:

> 1. Did the State comply with the procedural requirement of the Act;
>
> 2. Is the Individualized Educational Program (IEP) reasonably calculated to enable the child to receive educational benefits.

The Supreme Court stated that if these requirements are met, the State has complied with the obligations imposed by congress and the Courts can require no more. The Hearing Officer found the Ascension Parish School Board did meet these requirements and did provide the student a free appropriate public education and that the change in cued speech transliterator and bus services did not violate IDEA for John Gideon Veazey. The Panel agrees with this findings and the decision of the Hearing Officer in finding that the child was provided a free appropriate public education and that the change in the cued speech transliterator and bus services did not deny FAPE.

Section 442 further provides that "the School systems shall take steps to ensure that one or both of the parents of the exceptional student are present at each IEP meeting", and Section 442 provides in pertinent part, "each school system shall obtain formal parental approval of the educational placement decisions prior to providing initial special

education and related services. The IEP will be considered in effect after the parent(s), indicate formal written approval by signing the IEP/Placement document". The courts have consistently held that even an interim IEP offers FAPE under the Rowley Standard when the two-prong inquiry has been established. Rowley supra, requires an analysis of 1) whether the state complied with the procedural requirements of the Act, and 2) whether the IEP developed through that procedure was reasonably calculated to enable the child to receive educational benefits. ***Rowley*** supra, provides "a free appropriate public education" (FAPE) is met when the school system provides a student with access to specialized instruction and related services which are individually designed to provide some education benefits to that disabled child. This requirement is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The fact that a school is required to provide special education services to a disabled child under IDEA does not require these services to maximize the child's potential. (See ***Rowley*** supra and ***Cedar Rapids Community School District v. Garret F.***, 526 U. S. 66 (1999). the Hearing Officer determined that the Ascension Parish School District did give the child access to specialized instruction and related services which was individually designed to provide some education benefits and that the transfer to Gonzales Primary School did not deny the educational instruction and related services the child had at Oak Grove Primary School as contemplated in the **Rowley** case and the Panel agrees with this finding.

In developing the IEP, 34 C.F.R. Sect. 300.345 provides the framework for parental participation and consent. Public school systems must provide sufficient written notification to one or both of the parents to insure the opportunity to participate in the IEP meeting. This notification must be given in advance of the meeting and must state and be scheduled at a mutually agreed upon time and place indicating the purpose, the identification of

individuals who will be in attendance, and informing parents of their discretion to allow participation of other individuals who have knowledge of special expertise regarding the child.

The IDEA under 20 U.S.C. Sect. 1414 (a) (5) requires that a free appropriate public education must be tailored to the unique needs of the handicapped child by means of an individualized education plan (IEP). In developing the IEP, 34 C.F.R. Sect. 300.345 provides the framework for parental participation and consent. 34 C.F.R. Sect. 300.343 (C) (1) and Bulletin 1706 Sect. 440 (C) (1) further provides that the IEP of a child with disabilities must be reviewed at least once each year. Thus, it is not enough to simply notify the parents of their right to participate in the IEP meeting, but to allow the parent the opportunity to understand and actively participate in discussions and educational decisions making about their child. The parents must be equal participants in the IEP process. The right to equal participation, however, does not translate to the requirement of the school system to forego its legal responsibility under the IDEA, particularly as it relates to the proposed goals and objectives, the IEP content and consideration of recommendations of professionals in regard to the child's needs based on his disabilities. (See **Louisiana's IEP Handbook, Louisiana Bulletin 1706 Sect. 444 and 34 C.F.R. Sect. 300.347**.

In developing an IEP for a special education child and in tailoring the educational program and related services to the unique needs of the child, school systems are not required under the IDEA to meet any substantive standard prescribing the level of education to be accorded to the child. The school system teachers or other educational providers are not held accountable, if a child does not achieve the growth projected in the annual IEP goals and objectives or bench marks. They are only required to make a good faith effort to assist the child in achieving the goals and objectives or benchmarks listed in the IEP. (See 34 C.F.R. 300.350 (a) and (b) and Bulletin 1706 Sect. 440 (A) (1).

Additionally, in ***Houston Independent School District v. Bobby R.***, 200 F. 3rd 341 (5th Cir. 2000), the Fifth Circuit concluded that a denial of FAPE must be based upon proof presented by the parents that the IEP was not substantially or materially implemented. The fact that there may be some procedural deficiency in a child's IEP does not alone translate to a denial of FAPE. Thus, if the parents are to be successful in establishing a school board's failure to implement the IEP, they have the burden to prove through more than minor technical errors that the school system failed to implement substantial or significant provisions of the IEP. As evident from the decision of the Hearing Officer in weighing the testimony of all the witnesses and the evidence presented, although the Parents of John Gideon Veazey were able to show that their son was doing well with the individual cued speech transliterator and that he was being required to ride a handicapped children's bus with handicapped children, the parents did not carry its burden of overturning the administrative decision nor did they carry its burden in proving the denial of FAPE, despite the adjustment or changes in transportation services and the sharing of a cued speech transliterator. (See **Hampton School District** v. **Dobrowski**, 976 F.2d 48, 54 (1st Cir. 1992) and **Barnette** v. **Fairfax County School Board**, 927 F. 2d 146, 152 (4th Cir. 1991). The Panel further agrees that the Hearing Officer was in the best position to determine and weigh fact issues, and that we concur that her conclusions were correct, despite the changes in services resulting from the school site transfer of the child which we believe slightly impacted the child's related services, particularly the individualized cued speech transliterator.

The Hearing Officer determined that there was no change in the educational setting of John Gideon Veazey as a result of his transfer from Oak Grove Primary School to Gonzales Primary School, nor was there any requirement under IDEA or Bulletin 1706 that he attends the school closest to his home. She further held that Ascension Parish

School Board does have the authority and discretion to provide a cluster type or centralized program fro children with disabilities and that such a change is not a change in his program, nor was he denied FAPE because of this change or simply because John Gideon Veazey was require to ride a handicapped bus and share the cued speech transliterator with another student at the transferred school.

Counsel for the Ascension Parish School Board argues that Bulletin 1530 (The IEP Handbook) in pertinent part provides "The IEP committee must participate in decisions made about the placement; however, the school system has the right to select the actual school site in view of committee decisions". It further states "Although throughout Louisiana, most exceptional students are served in their neighborhood schools, there are some extenuating circumstances that impact the decision to serve a student in a school other than his/her neighborhood school". Bulletin 1530 further states "In a small school system, there may be only four (4) multi disabled students who need a multi disabled self-contained class. The school system may establish one classroom parish wide. Those multi disabled students could be grouped together on a centrally located campus...(Emphasis added)". Thus, under Bulletin 1530, an additional IEP/placement review meeting is not required when a city/parish school system elects to move the student to another school site within the system when all of the information on the IEP remains the same and the effect of the program has not been changed. The Parents of John Gideon Veazey disagrees and argue that this Bulletin did not undergo the statutory approval process. The parties have provided jurisprudence for and against the argument that the Court shall declare the rule invalid or inapplicable, if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with the required rule making procedures. Nevertheless, the record does not support this position. In fact, Bulletin 1530 was not even referenced in the decision of

the Hearing Officer nor was there any evidence introduced or considered by the Hearing Officer in relying upon her decision relative to the issue of educational placement and site location. The Hearing Officer, instead cited 34 D.F.R. 300.522 and 300.522 (a)(3)C and other supporting jurisprudence. In the hearing decision, the Hearing Officer also cited similar issues and arguments raised in Barnett v. Fairfax County School Board, 927 F.2d 146, 20 U.S.C. Section (s) 1414 (d) and other companion cases, which authorize the school districts to utilize regional day schools or centralized (cluster) cued speech programs. Despite the argument of counsel for the Parents on this issue relative to Bulletin 1530, the Panel agrees with the decision of the Hearing Officer that educational placement of a child in a particular educational curriculum is different from the geographical proximity of the placement of (site location where the child is to attend school), and that the School System has the exclusive or absolute obligation to determine the particular school the child will attend within certain rules and regulations set by statute or Courts, and their decision to place a child at a particular school will not be upset unless the court found the setting up of cluster programs violates federal or state laws. (See Department of Education of Hawaii v. Katherine D., 727 F. 2d 809, 813 (9th Cir. 1983), Cert. Denied, 471 U. S. 1117 (1985). Thus, the Panel also finds that this argument of counsel for the Parents on the constitutionality of Bulletin 1530 and that the Parents were not given appropriate notice or participation in the particular school their child would attend is not supported by the testimony and evidence and are without merit.

DECISION

In reviewing an Administrative Hearing, the State Review Level Panel must adhere to and is bound by existing statutory law and jurisprudence. The burden of proof is on the party in presenting their case to the Hearing Officer and persuading him/her to agree with their position if they desire to prevail. Likewise, this burden of proof is on

the parents in this matter to persuade the State Level Review Panel that the decision of the Hearing Officer should be overturned. Following a review of the due process hearing transcripts, the evidence submitted by the parties, memorandum of the parties, and the oral arguments of counsels, the Panel has determined that the Parents have failed to fulfill this burden.

The evidence, testimony, and law are very clear on the issue of transferring students to a cluster program at a different site location. Such a transfer is a mere transfer of students to schools and is not a change in educational placement. It is also clear that the type of notice in transfers related to a change in school site location does not require the same type of notification when determining the appropriate IEP for the student. Thus the transfer of John Gideon Veazey to a cluster or centralized program from Oak Grove Primary to Gonzales Primary School is not a change in placement. Additionally, there was no evidence provided by the Parents that the Ascension Parish School Board did not follow the statutory procedures with respect to this transfer.

The Hearing Officer determined that the transfer of John Gideon Veazey did not deny him a free appropriate public education (FAPE) and that the administrative decision to create cluster programs for cued speech transliterator students within the same school system was within the discretion and authority of the Ascension Parish School Board, and the Panel also agrees with this decision.

The State Review Level Panel agrees with the decision of the Due Process Hearing Officer and, therefore, affirms her decision in all respects.

APPEAL RIGHTS

The decision of the Review Panel shall be final unless a party brings a Civil Action for judicial review within thirty (30) days of the decision.

Signed this 24th day of April, 2001.

BY: s/ Arthur R. Thomas

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s/Jane Mangum

DR. JANE MANGUM
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s/Walter J. Horrell

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(FILED 00 AUG-2 AM 10:06)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JOHN VEAZEY AND TONYA VEAZEY	**CIVIL ACTION**
VERUS [sic]	
ASCENSION PARISH SCHOOL BOARD, STATE OF LOUISIANA, BARBARA LEBLANC, SUSAN ROBINSON, AND SHELBY ROBERT	**No. 98-277-B-M2**

ORDER

This matter is before the Court on cross motions for summary judgment.[1] In addition, the parties have filed a joint memorandum addressing the issue of whether the Court should remand the case for further administrative hearings.[2] For the reasons set forth below, the Court grants plaintiffs' motion for summary judgment to the extent a new administrative hearing is ordered. In all other respects, both motions for summary judgment are denied without prejudice. The court orders that this case shall be reviewed by a properly constituted administrative review panel which shall consider the issues presented in this case. The Court will administratively close this case in the interest of justice and

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[1]Rec. Doc. Nos. 25 (plaintiff's motion), 27 (defendant's motion).

[2]Rec. Doc. No. 56.

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NOTICE MAILED TO
s/FUP s/Diez
s/KC s/O'Bannon
s/Veazey
DATE 8-2 **BY** nml

ACTION INITIALS
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judicial economy until a proper administrative hearing is held.

1. Facts and Procedural History

John and Tonya Veazey filed this action individually and on behalf of their minor son, John Gideon Veazey ("Buddy") challenging the decision of the Ascension Parish School Board to transfer Buddy to Gonzales Primary School in Ascension Parish.

Buddy Veazey is a profoundly deaf child who has had the use of cochlear implants since the age of two years. These implants permit Buddy to communicate orally with members of his family as well as his school mates.

In addition to these implants, Buddy makes use of a technique known as "cued" speech which uses hand signals in conjunction with mouth movements to represent the phonetic sounds of the spoken language. As a part of his education, Buddy has made use of a "cued" speech transliterator who assists him in his use of cued speech during classes at school.

John and Tonya Veazey challenge the decision made by the Ascension Parish School Board to enroll Buddy at the Gonzales Primary School as opposed to Oak Grove Primary School, a school located closer to his home. In early August of 1996, the School Board notified the Veazeys that Buddy would continue to attend Oak Grove Primary School which, according to the plaintiffs, is the school that Buddy would have attended absent his disability. Buddy attended Oak Grove from 1995-1996. In late August, 1996, the School Board verbally informed the Veazeys that Buddy had been transferred to Gonzales Primary to be clustered with other "cued" speech students and to facilitate his use of a "cued" speech transliterator. The Veazeys were further told that placing Buddy at Gonzales Primary would benefit Buddy and improve his lip reading skills. The School Board memorialized this decision by sending a "site selection" form to the Veazeys which was dated August 19, 1995. The form

indicated that Gonzales Primary would provide "the student with opportunities to communicate using his chosen mode of communication with other age-appropriate hearing impaired students, thereby enhancing his communication and social skills."[3]

Pursuant to the provisions of the IDEA and the LECA, the Veazeys requested a due process hearing to consider Buddy's school placement. The hearing was held on October 14, 15 and November 14, 1997 to consider the School Board's decision regarding Buddy. The hearing officer rendered a decision on December 12, 1997 and ruled that "although the child was receiving appropriate aids and services in his neighborhood school environment; and although he was making satisfactory progress in that environment, the school board had absolute discretion to decide what school the child should attend."[4] The Veazeys appealed the decision to a state level appellate panel, pursuant to state regulations related to the LECA.[5] Further, the hearing officer held that the IDEA and the regulations pertaining to it, did not prevent the school board from transferring Buddy to Gonzales Primary.[6] The panel upheld the hearing officer's ruling.[7]

2. Issues presented

At present, the parties have filed cross motions for

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[3]Rec. Doc. No. 2, p. 8.

[4]Rec. Doc. No. 2, p. 13-14.

[5]Regulations for the Implementation of the Exceptional Children's Act (La. R.S. 17:1941, et. seq.), Bulletin 1706.

[6]particularly, the hearing officer focused on 34 CFR § 300.522 which requires a local education to ensure that a child attends the school he would attend if not disabled, if possible. Rec. Doc. No. 2, ps 13-14. The hearing officer found that the school board properly followed the IDEA (and LECA) guidelines.

[7]Rec. Doc. No. 2, p. 16.

summary judgment.[8] These motions only address the appeal of the administrative hearings because the issue of liability and damages have been bifurcated. In addition, the Court must consider whether the case should be remanded for another administrative hearing because of possible irregularities with the administrative appeal process.

3. Arguments Presented:

The parties have presented the Court with arguments addressing whether the School Board's decision comports with the provisions of the LECA and IDEA statutes. The Court is not required to reach a decision on these arguments at this time because of a more fundamental issue that must be decided by the Court.

The plaintiffs allege procedural defects in the administrative review of Buddy's placement decision. Specifically, the plaintiffs argue that one member of the appellate panel that reviewed Buddy's case had previously recused himself as a hearing officer. According to documents submitted by the plaintiffs in support of their motion for summary judgment, Harris D. Copenhaver was initially appointed as a hearing officer to review Buddy's case. Copenhaver later notified the parties of his intent to recuse himself saying,

> I have spent about 13 hours in time familiarizing myself with the facts of this case, and I feel I am presently prejudiced in favor of the Ascension Parish School Board. Therefore, I feel I could not be completely fair in any final decision regarding

[8]The defendants filed a motion for summary judgment on February 12, 1999, Rec. Doc. Nos. 25, 26. The plaintiff's then filed their own motion for partial summary judgment on February 16, 1999, Rec. Doc. Nos. 27, 28.

> the Veazey family. I am therefore recusing myself and closing my file on John Gideon Veazey * * * I will not be the hearing officer, and my file on John Gideon Veazey is now finaled and closed.[9]

Counsel for both the plaintiffs and defendant subsequently participated in a telephone conference with Copenhaver during which he expressed his intent to recuse himself.[10]

After Copenhaver recused himself, Madeline Carbonett was appointed as hearing officer and rendered a decision. Buddy's parents then appealed her ruling. The administrative review process requires that a three person panel be appointed to review the hearing officer's decision. For reasons not satisfactorily explained in the record, Copenhaver was appointed to sit on the panel that reviewed Carbonett's decision.

In a joint motion submitted to the Court, the parties agree that the Court has authority to either: (1) remand the case so that a properly constituted appellate panel may be appointed; or (2) rule on the cross motions for summary judgment presently before the Court. For the reasons which are set forth below, the Court finds that the proper course of action is to remand the case for another administrative hearing.

4. Legal Principles and Application to Facts

This Court reviews the administrative proceedings below de novo as a mixed question of law and fact.[11]

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[9]Rec. Doc. No 27, Exhibit 1.

[10]Rec. Doc. No. 27, Exhibit 1.(affidavit of plaintiff's counsel, Paul Veazey).

[11]Teague Independent School District v. Todd L., 999 F.2d 127 (5th Cir. 1993); Christopher M. Corpus Christi Independent School District, 933 F.2d 1285, 1289 (5th Cir.1991).

Independent review of the administrative process by the Court ensures procedural protections for the child's rights.[12] The Court may, however, review the entire record from the administrative proceedings to guide its decision.[13] Implicit in relying on these administrative proceedings for guidance is a finding that the proceedings have satisfied the constitutional requirements of due process. The Court believes that the proceedings in this case do not satisfy those requirements.

As previously set forth, the appellate review panel in this case included one member who had previously recused himself from this case. At a minimum, this suggests that Buddy's appeal was not given a fair hearing by the required three person review panel. Copenhaver previously cited "bias" in favor of the School Board when he recused himself. However, he proceeded to sit as a member of the review panel which upheld the hearing officer's decision. The Court believes that Copenhaver's presence on the review panel deprived the plaintiffs of a fair and constitutionally correct hearing. Under a de novo standard of review, the Court may permissibly "by pass" the administrative process, address the merits of the School Board's placement decision and render its own decision. However, the Court believes that Buddy's interests and the administrative review process would be best served if the appeal procedures set forth in the state regulations were properly followed in an unbiased fashion.[14] By allowing the plaintiffs to have a constitutionally correct hearing, this Court will be able to have a proper

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[12]*Christopher M*, 933 F.2d at 1289.

[13]See 20 U.S.C. §1415 (e) (2). (section of IDEA statute which directs the district court to give "due weight" to hearing officer's findings).

[14]See Honig v. Doe, 484 U.S. 231, 326-328; 108 S. Ct. 592, 606, 98 L.Ed. 2d 568 (1988) (Judicial review of administrative proceedings normally not available under precursor to federal IDEA statute until administrative proceedings are completed, but parents may bypass the administrative process when exhaustion would be futile or inadequate).

administrative record to review should the parties return to this Court after the administrative process has been completed.

As a result, the Court finds that a new administrative haring shall be granted to plaintiffs. The parties may agree to begin at the hearing officer level or at the administrative appeal level. This, of course, will depend on whether the facts in the original hearing have changed. This procedure will ensure that Buddy's case will receive the fair review that it deserves.

Therefore, IT IS ORDERED that:

(1) A new state administrative review hearing shall be held in accordance with this opinion;

(2) A new hearing officer and three-person review panel shall be appointed to hear and/or review this case. The hearing officer and panel shall not be constituted with any persons who have served as either hearing officers or as members of a prior three person review panel;

(3) The hearing officer and/or review panel shall follow the guidelines and procedures set forth by state and federal law in reviewing this case;

(4) The cross motions for summary judgment are DENIED without prejudice, except to the extent the Court has granted plaintiffs a partial summary judgment on the new administrative hearing. The Court reserves the rights of the parties to renew these motions after the state administrative review process has been completed.[15]

This case is hereby administratively closed. Should the parties desire to return to this Court, it will only be necessary to file a motion to reopen the case. Should the

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[15]Rec. Doc. Nos. 25, 27.

parties desire to reopen this case, the parties shall do so within twenty days after a final decision has been rendered in accordance with the administrative review process. A copy of any decisions rendered under the administrative process shall be filed with the motion to reopen.

IT IS SO ORDERED.

Baton Rouge, Louisiana, August 1, 2000.

s/Frank J. Polozola

FRANK J. POLOZOLA, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

(FILED Date Illegible)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

JOHN VEAZEY
AND TONYA
VEAZEY

VS. **CIVIL ACTION NO. 98-377-BM2**
JUDGE PLOZOLA [sic]

ASCENSION PARISH
SCHOOL BOARD,
STATE OF
LOUISIANA, **MAGISTRATE JUDGE: M2**
BARBARA LEBLANC,
SUSAN ROBINSON,
and SHELBY ROBERT

ORDER

The plaintiff's Motion considered, this matter is dismissed only as to the State of Louisiana through its Department of Education as of non suit, reserving to the plaintiffs and to the minor JOHN GIDEON VEAZEY, all

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NOTICE MAILED TO:
s/FJP
s/DM
s/Veazey
s/Diez
DATE_____ **BY** KC

rights against all other parties.

Ordered and signed at Baton Rouge, Louisiana this 31 day of Aug. 1998.

s/Frank J. Polozola
HON. FRANK J. POLOZOLA
DISTRICT JUDGE
HON. CHRISTINE NOLAND
UNITED STATES MAGISTRATE JUDGE

STATE LEVEL REVIEW DECISION

I. TITLE INFORMATION

IN RE: JOHN GIDEON VEAZEY

II. PARTIES

A) Parents of Student: John E. Veazey and Tonya Veazey
Represented by Paul L. Veazey
Attorney at Law
Post Office Box 2900
Lake Charles, Louisiana 70602-2900

B) Ascension Parish School System
Represented By:
Jeffery Diez
Attorney at Law
324 E. Worthy Road
Gonzales, Louisiana 70737-4235

III. BASIC INFORMATION:

John Gideon Veazey is nine (9) years old and is presently in the third grade, attending Oak Grove Primary School. John was deaf at birth, but when he was two (2) years old, he received a Cochlea implant which allows him to actually hear sounds. John has been evaluated as being Hearing Impaired. When John attended pre-school, he was in a cluster type program at Gonzales Primary School. The home base, neighborhood school is Oak Grove Primary School. John was moved to the home based school in the first grade. It is three (3) miles from his home. John mainstreamed in a regular class for the 1994-1995 school year. He received the services of a cued speech transliterator and was sent to a resource room for support services. John progressed well in the environment.

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In late August of 1996, with no apparent explanation at that time, the Ascension Parish School Board contacted the Veazey's by telephone and by mail and informed them that John would be transferred to Gonzales Primary School for the 1996-1997 school year. During the summer of 1996, the Ascension Parish School System adopted an administrative policy of clustering all cued speech children. John was clustered at Gonzales Primary with other hearing impaired youngsters. Gonzales Primary School is seven (7) miles from the Veazey home. The parents of John Veazey requested a due process hearing on August 26, 1996. A stay put order was put into effect and John remained at Oak Grove Primary with a cued speech transliterator and support services.

IV. PARTICIPANTS

Due Process Hearing Officer

Madeline S. Carbonette
Attorney at Law
7354 Alberta Drive
Baton Rouge, Louisiana 70808

Attorney for Student

Paul L. Veazey
Attorneys at Law
Post Office Box 2900
Lake Charles, Louisiana 70602-2900

Attorney for School System

Jeffery P. Diez
Attorney at Law
324 E. Worthy Road
Gonzales, Louisiana 70737-4235

Witnesses:

1) Roger Clouarte – Ascension Parish School Board

2) Susan Robinson – Director of Special Education, Ascension Parish School Board
3) Ina Smiley – Staff of U.S. Representative Billy Tauzin
4) Sadie Capprael – Parent of Hearing Impaired Child
5) Mary L. Smith – Member of Louisiana Association of the Deaf
6) Terrence White – Parent of Hearing Impaired Child
7) Shelby J. Robert – Superintendent, Ascension Parish School Board
8) Leslie Fatherree – Parent of Hearing Impaired Child
9) Paula Barbera – Supervisor, Special Education, Ascension Parish School Board
10) Wendy Sheets - Transliterator, Ascension Parish School Board
11) June Street – Louisiana Department of Education
12) Barbara LeBlanc – Coordinator of Low Incident Disabilities for Ascension Parish School Board.
13) Gina Monique Madere – Parent of Hearing Impaired Child
14) John Gideon Veazey – Child
15) Tonya Veazey – Mother of John Veazey
16) John E. Veazey – Father of John Veazey
17) Barbara Lee – Deaf Education Consultant, Associate Director of Programs, Wake County, North Carolina, Former Employee of Ascension Parish.

V. STATEMENT OF JURISDICTION

The hearing in this matter commenced on October 14, 1997 and continued until October 15,

1997. At this time, the hearing was continued until November 24, 1997. The hearing was an open hearing.

The Due Process Hearing Officer rendered her opinion on December 22, 1997.

This is an appeal by the parents of John Gideon Veazey under the provisions of Louisiana Revised Statutes 17:513 et seq. (The Exceptional Children's Act).

VI. SUMMARY OF APPLICABLE LAW AND REGULATIONS

The issues raised in this appeal are governed by Louisiana Revised Statutes 17:1941 et seq., Education Opportunities For Exception Children's Act; Louisiana "Department of Education Bulletin 1707 (Regulations for Implementation of the Exceptional Children's Act); Louisiana Department of Education Bulletin 1530 (Louisiana I.E.P. Handbook); Untied States Code 20:1401 et seq., Education of the Handicapped Act and the various reported cases interpreting said statutes and regulations.

VII. FINDING OF FACT

John Gideon Veazey is the son of John and Tonya Veazey. He is nine (9) years old and was born on July 10, 1988. John is presently in the third (3rd) grade at his home based school, Oak Grove Primary School. John is at Oak Grove as the result of a stay put order that is required because of the pending due process proceeding. John is classified as hearing impaired and is mainstreamed into a regular class room. He is assisted in class by a cued speech transliterator.

Support services are provided on campus in the resource room where he goes for support services in the nature of auditory training. John is progressing

well academically. The focus of the hearing was whether or he is in a proper educational environment, as required by La. R.S. 17:513 et seq. The Exceptional Children's Act and 20 U.S.C.A. Sec. 1400 et seq. The Individuals with Disabilities Education Act.

In the 1995-1996 school year, John was placed in his home based school, Oak Grove Primary. In late August, 1996, immediately prior to the commencement of the 1996-1997 school year, John's parents were contacted by the Ascension Parish School Board. The School Board informed the Veazeys that they were transferring John to Gonzales Primary School where he would be in a clustered environment. There would be no change in his "individualized education program" or "IEP" but there would be a change in the site where the services would be provided. The School Board made the change in site location because cued speech children need the opportunity to interact with other hearing impaired children, as well as the other members of their peer group. This also gives the opportunity to centralize services. There are a number of other school systems in the state that cluster low incident disabilities.

The testimony in this case focused on the goals for educating hearing impaired students. All parties agreed that the needs of the student should determine the characteristics of the program and the placement to ensure that the most appropriate education is received. The characteristics of the program in this case would be the same if John were placed in his home based school or in a clustered environment.

The site location as placement was an administrative decision and did not alter the services required under the I.E.P.

VIII. APPLICABLE LAW

The Education of the Handicapped Act (20 U.S.C. sec 1401 et seq.) requires participating state and local education to assure that handicapped children are guaranteed certain procedural safeguards that will ensure the child a free appropriate education in the least restrictive environment. The State in an effort to ensure the Federal regulations were followed enacted Louisiana Revised Statutes 17:1941 et seq., Educational Opportunities for Exceptional Children's Act. Section 1944 (c) of this Act provides that:

> "C. To make the most effective use of human and fiscal resources available for special education and related services, the Department of Education, with the approval of its governing authority, shall issue regulations, shall be written in cooperation with representatives from other state and private agencies involved in special education services, parish and city school boards, teachers of children receiving special education services, regular classroom teachers, universities and colleges, non-public schools providing representatives of recipients of special education and related services and their families." La R.S. 17:1944(c).

Pursuant to the above State Department of Education carefully complied Department of Education Bulletin 1706 (Regulations for Implementation of the Exceptional Children's Act).

Section 402 of Bulletin 1706 defines "Free Appropriate Public Education" (FAPE)

Section 402. Definitions

A. Free Appropriate Public Education (FAPE)

1.) "Appropriate public education" means all special education and related services provided each exceptional child which—

a. meet State Board standards, including these Regulations and all applicable bulletins approved by the State board (i.e., Bulletin 741, Bulletin 746, Bulletin 1508).

b. are provided in conformity with an IEP at public expense, under public supervision and direction and without charge, including preschool, elementary school, or secondary school education.

2.) The term "free" means without charge, including the following:

a. cost for all room, board, and non-medical care provided when residential educational placement is necessary.

b. costs for an independent (not necessarily private) individual evaluation conducted by the school system either fails to initiate a hearing or fails to prevail in a

> hearing to show that its evaluation is appropriate, or when an independent educational evaluation is requested by a hearing officer, the Department's Special Education Panel, or a court off competent jurisdiction.

A "free" appropriate public education" mandates a school district to have a program with requirements that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child, Board of Education vs. Rowley 458 US 176, 200, 192 S. Ct 3034, 3048, 73 L. Ed 2d 690 (1982), Alamo Heights Independent School District vs. State board of Education, 790 F2d 1153, (5th Cir 1986). The term free appropriate public education has been interpreted by the United States Supreme Court in the case of Hendrick:

> Hudson District Board of Education vs. Rowley, 458 US 179, 102 S. Ct. 3034 (1982) as follows:
>
> > "A free appropriate public education consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."

In addition to the free appropriate education the state is required to offer special related services as defined in State Bulletin 1879 which states:

> Related Services are defined as transportation and such developmental, corrective, and other supportive services as are required to assist an

> exceptional child to benefit from special education. Related services and audiological services, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, interpreter services, orientation and mobility training, evaluation purposes. The term also includes health services, social work services in school and parental counseling and training. In the educational system, related services are provided only when it can be documented that the student needs or requires the services to benefit from his/her special education program. The majority of the related services provided in the educational setting are interventions in the form of therapy such as speech, occupational or physical therapy and counseling. The focus of therapies provided in the educational environment are different from those provided in a hospital, clinical or rehabilitative setting.

The School Board is mandated to provide these services to support the education of any student that shows a particular need.

To ascertain that there is a standard criteria to govern how a "free appropriate public education" will be provided, each school district is required to prepare an annual "individualized education program." The I.E.P. is tailored to fit the individual needs of the student and to provide the services necessary to provide a "free appropriate public education."

The purpose of the Education of the Handicapped Act 20 USC Sec. 1401 et seq. the Federal Statute that is the basis of the Louisiana State (La. R.S. 17:1941 et seq.) was to promote the education of handicapped children and to prevent situations where children were either totally excluded from the from [sic] schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out." H.R. 94-332 p. (1975) Board of Education of Hendrick Hudson Control School District Bd of Ed. Westchester County vs. Rowley 102 S.Ct 3034, 459 US 175, 73 L. Ed 2d 690 (1982)

The Supreme Court mandated in the Rowley decision that a two step test is required to determine if the State has complied with the Acts (in this instance, the Exceptional Children's Act).

The first test is whether the State has followed the procedural requirements. The second required is whether "the individualized education program developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits." Rowley supra at 3051.

The appropriate standard to govern judicial review under the IDEA is set forth in 20 U.S.C. Sec. 1416(e) (2), which states that "the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of the party, and basing its decision on the preponderance of evidence shall grant such relief as the court determines is appropriate." The scope of the court's inquiry was set forth by the Supreme Court in Rowley, supra, wherein the court stated that:

> "A court's inquiry in suits brought under Sec. 415 (e) (2) is two-fold. First, has the State complied with the procedures set forth in the Act? Second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the

> state has complied with the obligations imposed by congress and the courts can require no more."

In assuring that the requirements of the IDEA have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the states. Rowley, supra at 458 U.S. 207, 102 S.Ct. 3051. courts lack the "specialized knowledge and experience necessary to reso0lve persistent and difficult questions of educational p9olicy." Rowley, supra at 458 U.S. 208, 102 S.Ct. 3052 (quoting San Antonio Independent School district v. Rodriguez, 411 U.S. at 42, 93 S.Ct. at 1301). The responsibility "for choosing the educational method most suitable to the child's needs was left by the Act to state and local educational agencies in cooperation with the parents." Rowely, supra at 458 U.S. 207.

In judicial review of administrative decisions, the burden of proof is on the party seeking to overturn the administrative decision. Hampton School District v. Dobrowski, 976 F.2d 48, 54 (1st Cir. 1992); Roland M. v. Concord School committee, 910 F.2d 983, 991 (1st Cir. 1990); Barnette v. Fairfax County School Board, 927 F.2d 146, 152 (4th Cir. 1991), cert. Denied, 112 S.Ct. 175, 116 L.Ed.2d 138 (1991). In due process hearings, the party attacking the IEP (or seeking to change the IEP) has the burden of proof. Christopher M. V. Corpus Christi Independent School District, 933 F.2d 1285 (5th Cir. 1991); Johnson v. Independent School District No. 4, 921 F.2d 1022 (10 Cir. 1990). This is because the IDEA creates a "presumption" in favor of the educational placement established in [a child's] IEP. Christopher M. V. Corpus Christi Independent School District, supra at 933 F.2d 1291 (quoting Tatro v. Texas, 703 F.2d 823, 830 (5th Cir. 1983), affirmed, 468 U.S. 883 (1984); Swift v. Rapides Parish School Board, 812 F.Supp. 666 (W.D. La. 1993)

A review of the record indicates that the individualized education program (IEP) fits all of the

requirements under both State and Federal law. The issue before the tribunal is the site of services. The terms "site," "placement," "Least restrictive environment" (LRE), and program are often confused and the terms are used interchangeably. The IEP committee must decide "placement" because it encompassed accompanying services.

The services required with a placement will necessarily have to be appropriate to the child's disability. The "site" is the location where these services are to be provided.

> The IEP committee must participate in decisions made about placement; however, the school system has the right to select the actual school site in view of committee decisions. Louisiana Bulletin No. 1530 p.9.

While there was some question raised as to whether the change in site should be in writing, this issue would be moot. The notice would be important to ensure the child right to due process. Since there was a hearing, these rights have not been abridged, this issue is not pertinent.

Both State and Federal law "requires placement of exceptional children needing special education and related services in public or non-public schools in other agencies nearest the place of residence, if placement is appropriate."

In a recent federal case Flour Bluff Independent School District v. Katherine M. 91 F.3d 698 (5th Cir. 1966), writ denied _____ U.S. _____ (1997, Flour Bluff has an almost identical set of facts. There, a deaf child, living in Flour Bluff School District (9 miles from her house), was attending a regional day school for students with disabilities as Calk Elementary (sixteen miles from her home) which was the "cluster" or "group" site for provision of services. Her parents objected to the cluster site and requested her enrollment at her neighborhood school which the school district denied. The Fifth Circuit denied the transfer, stating at page 676:

> State agencies are afforded much discretion in determining which school a student is to attend ... The regulations, not the statute, provide only that the child be educated "as close as possible to the child's home." However, this is merely one of many factors for the district to take into account in determining the student's proper placement. It must be emphasized that the proximity preference or factor is *not* a presumption that a disabled student attend his or her neighborhood school.
>
> IDEA expressly authorizes school districts to utilize regional day schools such as the one at issue here, and we think the importance of these regional programs is obvious. *Undoubtedly there are a limited number of interpreters, speech pathologist with backgrounds in deaf education, and deaf education teachers; and, by allocating these limited resources to regional programs, the state is better able to provide for its disabled children.* Additionally, by placing these educators at regional centers, those centers are *better able to provide further training for those educators and make substitutions for absent educators.* (Emphasis added.)

The facts here are similar. John lives three (3) miles from his neighborhood school, and only 7 miles from the school system designated school (not 9 versus 16 miles which the court found insignificant). Most importantly though, the court's holding is grounded in its opinion that there is no presumption of neighborhood school attendance and that the school district's decisions regarding 1.) the school site upon which to provide services and 2.) selecting the school site that a particular student was to attend, controls and should stand.

See also Barnett vs. Fairfax County School Board 927 Fd 2d 146 (4th Cir.) cert, denied 502 U.S. 859, 112 S.Ct. 175 (1991) Michael Barnett is a profoundly hearing impaired high school student. Michael participated in a "cued speech" program. He received his education in a centralized cued speech program. Michael thrived in the cued speech program with a transliterator and support services. Michael's parents objected to the location of the cued speech program and wanted Michael transferred to his home based school. The court discussed placement in the lease [sic] restrictive environment and the regulations pertinent to placement and stated that while the regulations require a school board to take into consideration the geographical proximity of the placement, there is no absolute obligation on a school board to place a child in his home based school. The court stated further:

> "While a school system must offer a program which provides educational benefits, the choice of the particular educational methodology employed is left to the school system. ROWLEY, 458 U.S. AT 208. . . The court should consider the educational reasons why a program is established in centralized fashion. Here having all interpreters, teachers, therapist, and students together in an ongoing program which allows staff interaction, accessibility, and provides much greater cohesiveness. . . . Whether a particular service or method can feasibly be provided in a specific special educational setting is an administrative determination that state and local school officials are far better qualified and situated than are we to make. Moreover, we believe that when devising an appropriate program for individual students, a school system may consider the feasibility of such a program. RONCKER V. WALTER, 700 F.2d

1058, 1063 (6th Dir.), cer. Denied, 464 U.S. 864 (1983); DEPARTMENT OF EDUC. OF HAWAII V. KATHERINE D., 727 F2d. 809, 813 (9th Cir. 1983), cert. Denied, 471 U.S. 1117 (1985); GILETE V. FAIRLAND BD. OF EDUC., 724 F.Supp. 343, 346 (D.D. Ohio 1989), appeal dismissed, 895 F.2d 1413 (6th Cir. 1990).

DECISION

In reviewing the facts in this case, the panel is bound by the existing statutory law and jurisprudence. The parents in this matter have the burden of presenting their case and persuading the trier of fact (Hearing Officer) that their position should prevail by a preponderance of evidence. After a review of the testimony, they have not accomplished this burden. John Veazey was transferred to a clustered program at a different site location. The law is clear that this transfer of services can be accomplished administratively.

State agencies have much discretion in determining the site where services may be given. The child should be placed in the "Least Restrictive Environment" in the school nearest his home unless his IEP indicated the services cannot be provided in that site. The facts in this case show that the services can be provided in another site a short distance from the home school. While the nearness factor should be taken under consideration, it does not create a presumption in favor of the child. The placement of the child in the clustered school thus becomes the decision of the school system.

The next consideration then would be that of services. While the testimony of the only expert witness in this hearing, Barbara Lee, was impressive, it did not resolve this issue. The system is not required to present a perfect situation to educate children under IDEA in the Exceptional Children's Act. The evidence presented indicated that John Veazey could get all of the services required in the proposed site at Gonzales Primary School. Therefore, the decision of the Hearing Officer is upheld.

APPEAL RIGHTS

The decision of the Review Panel shall be final unless a party brings a Civil Action within thirty (30) operational days of the decision.

Signed this 16th day of March, 1998

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HEARING OFFICER FINDINGS AND DECISION
IN RE JOHN GIDEON VEAZEY

STUDENT'S NAME/AGE/ADDRESS

JOHN GIDEON VEAZEY
9 YEARS OLD
40097 RONDA AVE.
PRAIRIEVILLE, LA 70769
PRESENT AT TWO DAYS OF THE HEARING

CURRENT SCHOOL/GRADE

OAK GROVE ELEMENTARY
REGULAR CLASSROOM
3RD GRADE

EXCEPTIONALITY

PRIMARY: HEARING IMPAIRED

PARTICIPANTS

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REPRESENTATIVE OF SCHOOL SYSTEM

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PARENTS OF CHILD

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PRAIRIEVILLE, LA 70769

WITNESSES AT HEARING

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ASCENSION PARISH SCHOOL BOARD
SUSAN ROBINSON
DIRECTOR OF SPECIAL EDUCATION
ASCENSION PARISH SCHOOL BOARD
INA SMILEY
EMPLOYEE IN BILLY TAUZIN'S OFFICE
SADIE CAPPRAEL
PARENT OF HEARING IMPAIRED CHILD
MARY L. SMITH
MEMBER OF LOUISIANA ASSOCIATION OF DEAF
TERRENCE WHITE
PARENT OF HEARING IMPAIRED CHILD
SHELBY J. ROBERT
SUPERINTENDENT
ASCENSION PARISH SCHOOL BOARD
LESLIE FATHERREE
PARENT OF HEARING IMPAIRED CHILD
PAULA BARBERA
SUPERVISOR SPECIAL EDUCATION
ASCENSION PARISH SCHOOL BOARD

WENDY SHEETS
TRANSLITERATOR
ASCENSION PARISH SCHOOL BOARD
JUNE STREET
LOUISIANA DEPARTMENT OF EDUCATION
BARBARA LEBLANC
ASCENSION PARISH SCHOOL BOARD
GINA MONIQUE MADERE
PARENT OF HEARING IMPAIRED CHILD
JOHN GIDEON VEAZEY
CHILD
TONYA VEAZEY
MOTHER OF CHILD
JOHN E. VEAZEY
FATHER OF CHILD
BARBARA LEE
FORMER EMPLOYEE OF ASCENSION PARISH SCHOOL BOARD

VEAZEY EXHIBITS

P-1. Site determination form 8/19/96
P-2. Site determination form, Emily Fatherree
P-3. Audiologist Report
P-4. Center for Applied Research Evaluation
P-5. California Achievement Test
P-6. IEP, John Veazey, 12/12/95
P-7. IEP, John Veazey, 3/23/95
P-8. Progress reports
P-9. Note, 5/23/96
P-10. Request for Due Process Hearing, 8/26/96
P-11. Office of Special Education Letter
P-12. Site Determination Form, Chelsie Madere
P-13. Letter fro Ricky L. Babin, 9/5/96
P-14. LRE Overview, 8/19/96

P-15. Letter from John Veazey, 9/25/96
P-16. Letter from Barbara Caldwell, 3/18/97
P-17. Memo, 8/12/96
P-18. IEP, Jonathon Crappell, 5/22/96
P-19. IEP, Jonathon Crappell, 5/22/96
P-19A. Office of Special Education Letter
P-20. Site Determination Form, Chelsie Madere 1995 & 1996
P-21. Baton Rouge Parents Article
P-22. Letter from Paul Veazey, 9/26/1996
P-23. Survey, May 7, 1996
P-24. John Veazey IEP(s) in Globo (5 total)
P-25. Resume of Barbara Lee (with letter dated December 15, 1997)
P-26. Recommendations from Barbara Lee
P-27. Recommendations from Barbara Lee (different than P-26)
P-28. Fax to Paul Veazey
P-29. Fax to Paul Veazey

ASCENSION PARISH SCHOOL BOARD EXHIBITS

SB-1. In Globo, Letters from other Parish School Boards concerning clustering of students with low incidence disabilities
SB-2. In Globo, Ascension Parish low incidence population surveys
SB-3. Letter to Veazeys, 8/21/96
SB-4. Clustering Survey
SB-5. National Association of state Directors Guidelines (Booklet)
SB-6. Letter to Veazeys, 8/21/96 (site determination form attached)
SB-7. Miquel Gautreau IEP
SB-8. Letter 6/11/97, Barbara Lee's draft attached

SB-9. Blank IEP form

HEARING OFFICER EXHIBITS

HO-1. Notice of Hearing

HO-2. In Globo, Letter & Subpoena to Witnesses on behalf of Veazeys, Return Receipt attached

HO-3. In Globo, Letter & Subpoena to Witnesses on Behalf of School, Return Receipt attached

HO-4. Letter from Paul Veazey, 10/8/96

HO-5. Pre-Hearing Brief submitted by School

HO-6. Post Hearing Brief submitted by Parents

HO-7. Post Hearing Letter submitted by Parents

HO-8. Post Hearing Brief submitted by School

HO-9. Post Hearing Letter submitted by School

HO-10. Rebuttal Brief submitted by Parents

INTRODUCTION

The Hearing Officer originally appointed recused himself on September 2, 1997. This Hearing Officer was appointed on September 5, 1997. The Due Process Hearing was held on October 14, 1997 and October 15, 1997, at Donaldsonville, Louisiana, pursuant to L.S.A. 17:1941, et esq. All parties present were identified and the rights of the student were reviewed. The child was present and the hearing was open to the public. The Hearing was left open for the testimony of Barbara Lee, a witness who resided in another State. The Hearing was continued until November 24, 1997, which was the first date the witness was available for testimony. All testimony in this Hearing was completed on November 24, 1997. At the request of both parties, the Hearing was held open until December 12, 1997, to allow both parties to submit memorandums and legal authorities to the Hearing Officer.

In accordance with Section 508 (B)(2)(d), this decision is made and mailed to the parties within ten (10) operational days of the termination of the hearing on December 12, 1997.

STIPULATED FACTS

1. John Gideon Veazey is a deaf child and has been evaluated and classified as disabled under the provisions of Individuals with Disabilities Education Act (IDEA), and the Louisiana Education of Handicapped Children Act (LEHCA, La. R.S. 17:1941, et seq.)
2. The Ascension Parish School Board receives both State and Federal Funds.
3. John Veazey is in the 3rd grade at his neighborhood (home based) school, Oak Grove Primary School, under a stay-put order.
4. Oak Grove Primary School is three (3) miles from John Veazey's residence and Gonzales Primary School is seven (7) miles from his residence.
5. There are no regional educational centers in Louisiana.
6. Shelia Savioe would testify that if John Veazey had been transferred in 1996-97 School Year he would have been at Gonzales Primary School for the 2nd grade and shared a transliterator with Jonathan Crappell.

FACTS

At the time of the hearing, John Gideon Veazey was in the third grade and attending Oak Grove Primary School. He has been deaf since birth. When he was two years old he received a cochlear implant which allows him to actually hear sounds. He has been evaluated and identified as Hearing Impaired. He had been in a special preschool classroom at Gonzales Primary School. He had been in a cluster type program at Gonzales Primary School which was not his neighborhood (home based) school. He had been moved to his neighborhood (home based) school in the first grade, 1994-96 school year. His neighborhood (home based) school was Oak Grove Primary School for the 1995-96 school year. At Oak Grove Primary School, he was in a regular classroom and received the services of a cued speech transliterator. He was making progress and doing well in the

regular classroom. He was going to a resource room for auditory training; he did not require any academic assistance.

In late August 1996, the Ascension Parish School Board contacted the Veazeys by phone and mail and informed them that John Gideon Veazey would be transferred to Gonzales Primary School for the 1996-97 school year. The Ascension Parish School Board had adopted a policy of clustering all cued speech children at a central location which was to be Gonzales Primary School. The Veazeys objected to this transfer and requested a Due Process Hearing on August 26, 1996. The Veazeys requested a stay put order and John Veazey has remained at Oak Grove Primary School during the hearing process. He is currently attending Oak Grove Primary School in a regular classroom with a cued speech transliterator. There are no other hearing impaired children in his classroom. He still goes to a resource room for auditory training. He does not require any academic assistance. This hearing was held as a result of the Veazey's request for a Due Process Hearing.

ISSUES

The issues in this case are as follows:

I. Whether the transfer of John Gideon Veazey from his neighborhood (home based) school to a cluster program at another school located in the Parish would be considered a change to a more restrictive placement?

II. Whether the Ascension Parish School Board has provided a free appropriate public education to John Gideon Veazey?

SUMMARY OF TESTIMONY

Roger Clouatre, a member of the Ascension Parish School Board, testified that to his knowledge there was no school board meeting held to discuss clustering of disabled students. He did not recall specific conversations with parents or school employees about clustering.

Susan Robinson, testified that she has been Director of Special Education for Ascension Parish School Board since

July 1, 1996. She testified about her job description. She testified about the decision to cluster the cued speech hearing impaired students at Gonzales Primary School. She testified that the program and placement were not being changed only the site was being changed. She testified that the site change was an administrative decision. The Ascension Parish School Board made the decision to cluster the cued speech students based on their mode of communication, unique/specific needs and opportunity to interact with other deaf children. The unique need of these children requiring them to be clustered is the cued speech. She testified that other School Boards cluster low incident disabilities.

Ina Smiley, an employee of Billy Tauzin, testified about being contacted by Mrs. Fatherree concerning her child being moved to a different school. She contacted Susan Robinson to discuss Ascension Parish School Board's new policy to cluster cued speech children.

Sadie Crappell, mother of a hearing impaired child, testified that her son is 11 years old and in the third grade. She received a phone call from Susan Robinson about changing her son's school. Her child has never been placed in his home based school. The Ascension Parish School Board wanted to place her child and the Veazey child in the same classroom in a cluster site. She testified about language levels implemented by Barbara Lee and that once a child reached a certain level the child would be transferred to his home based (neighborhood) school.

Mary Smith, a member of the Louisiana Association of Deaf, testified that she has been deaf all her life. She testified about different programs and she supports the right of the parents to select options for their children.

Terrence White, father of a deaf child, testified that he lives in St. James Parish. His child is hearing impaired and St. James Parish sent him to Ascension Parish Schools for services until he reached the 1st grade. His child was moved back to St. James Parish so he could attend his home based school.

Shelby J. Robert, Superintendent of Ascension Parish School Board, testified about reasons to cluster the cued speech children. He testified that there were academic reasons to cluster and that the teachers were better trained at a cluster site. He testified about discussions with Susan Robison about clustering.

Leslie Fatherree, mother of a hearing impaired child, testified that she is a transliterator for Ascension Parish School Board. She testified that cued speech is a method of communication using the English language. It is based on the way words sound. There are problems with transliterating for more than one child. She teaches cued speech at the Voc Tech School. She testified that is important to have eye contact with a child when using cued speech. Her daughter uses cued speech. When her daughter was moved to her home based school, she was concerned and discussed the move with Susan Robinson who told her it was that law that her child had to go the home based school. She testified about conversations with parents, school board employees, and Ina Smiley about the clustering of the cued speech children.

Paula Barbera, Supervisor of Special Education for Ascension Parish School Board, testified about the decision to cluster cued speech children. She testified about the meetings and discussions on clustering.

Wendy Sheets, transliterator for Ascension Parish School Board, testified about conversations with Barbara LeBlanc on clustering the cued speech children.

June Street, employee of State Department of Education, testified about her duties. She testified about sign language, cued speech, and clustering children with disabilities. She obtained information on clustering done by other Parish School Boards.

Barbara LeBlanc, Coordinator for low incident disabilities for Ascension Parish School Board, testified about her job description and duties. She testified about the School Board's decision to cluster the cued speech children

at Gonzales Primary School. The School Board looked at the transfer of these students as a site change, not a change in the child's IEP. She testified about conversations with school employees, parents and other witnesses.

Monique Madere, mother of a hearing impaired child, testified about her child's site determination forms. Her child is in a regular classroom with a cured [sic] speech transliterator, but she is not at her home based school. She testified about conversations with parents, school board employees, and other witnesses about the clustering of the cued speech children.

John Gideon Veazey, the child, testified that he is nine years old. He wants to remain at Oak Grove Primary School. His sister attends Oak Grove Primary School. He wants to be on his own and around hearing people.

Tonya Veazey, mother of John Gideon Veazey, testified about IEP meetings, the mainstreaming program for her child and her child's long range goals. She testified about her child's test scores. She testified about the Ascension Parish School Board's decision to move her child to his neighborhood (home based) school, Oak Grove Primary School. She testified about the site determination form and about conversations with school employees and other parents concerning this transfer.

John Veazey, father of John Veazey, testified that he believes that Ascension Parish School Board's transfer of his child to another school is more than a change of site. He believes it is a change in his child's educational program. He testified about conversations with Susan Robinson about this transfer. He testified about his child's medical and educational history. He testified about his child's long range goals. He testified about conversations with school employees and other parents concerning this transfer.

Barbara Lee, former employee of Ascension Parish School Board, testified about her educational background and her employment history. She was a former deaf education coordinator for Ascension Parish School Board. She

testified about learning of the Ascension Parish School Board's plan to cluster the cued speech children for the 1996-97 school year and various conversations with school employees the plan [sic]. She testified about the eight phases of learning language (Bloom & Lahey Program). She testified about cued speech and different methods of communication with deaf students. She testified that the School System should provide options to the parents of deaf children. She testified about John Veazey's test scores and his IEP's. She testified about other deaf children. She testified that the parents should have the options in the education of their hearing impaired children.

SUMMARY OF APPLICABLE LAW AND REGULATIONS

The Individuals with Disabilities Educational Act (Individuals with Disabilities Education Act Amendments of 1997) requires states to provide disabled children with a "free appropriate public education" in return for acceptance of federal funds. The Exceptional Children's Act, Louisiana revised Statutes 17:1941, et seq. states that it shall be the duty of state, city and parish public school systems of the State of Louisiana to provide an appropriate, free, publicly supported education to every exceptional child who is a resident therein.

The term free appropriate public education has been interpreted by the United States Supreme Court in the case of HENDRICK HUDSON DISTRICT BOARD OF EDUCATION VS. ROWLEY, 458 US 179, 102 S. Ct. 3034 (1982) as follows:

> "A free appropriate public education consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."

In ROWLEY, the Supreme Court also held that in order to determine if a school district has met its obligation to provide

all handicapped students with a free appropriate public education, the courts must engage in a two part inquiry:

1. Did the State comply with the procedural requirement of the Act;
2. Is the Individual Educational Program (IEP) reasonably calculated to enable the child to receive educational benefits.

The court stated that if these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Once a child's educational program is determined, the local school district must attempt to place the student in the "Least Restrictive Environment" (LRE). The educational placement of each child with a disability is based on his IEP and is as close as possible to the child's home. 34 C.F.R. Section 300.552. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled. 34 C.F.R. Section 300.552.

In FLOUR BLUFF INDEPENDENT SCHOOL DISTRICT V. KATHERINE M., 91 F.3d 689 (5th Cir. 1996), Katie, a third grade student with a hearing impairment, had been attending a regional day school. She was mainstreamed with the assistance of a speech interpreter. She also received support services. Her mother requested that she be transferred to the school that she would normally attend in her own district. A Due Process Hearing Officer granted the mother's transfer request. The School District appealed and the District Court upheld the appeal. The Fifth Circuit Court of Appeals reversed and remanded the district Court ruling based on its finding that the district Court misconceived the proximity factor in Katie's placement decision. In this case, the Court stated as follows:

> "...Congress left the choice of educational policies to methods where it properly

> belongs—in the hands of state and local school officials...
>
> State agencies are afforded much discretion in determining which school a student is to attend. Under the regulations governing the placement of a student in the "Least Restrictive Environment", a child should attend his or her neighborhood school unless the child's IEP requires arrangements that do not exist at that school...The "as close as possible to the child's home." However, this is merely one of the factors for the district to take into account in determining the student's proper placement. It must be emphasized that the proximity preference or factor is not a presumption that a disabled student must attend his or her neighborhood school."

In this case, the court stated that IDEA expressly authorizes school districts to utilize regional day schools. 20 U.S.C. Section (s) 1414 (d).

In BARNETT V. FAIRFAX COUNTY SCHOOL BOARD, 927 F.2d 146, a hearing impaired student had been receiving special education utilizing centralized (cluster) cued speech program. After he had attended two years of high school in this centralized program, his parents requested that he be transferred to his neighborhood school. The Court denied the request for transfer stating as follows:

> "While a school system must offer a program which provides educational benefits, the choice of the particular educational methodology employed is left to the school system. ROWLEY, 458 U.S. AT 208. . . The court should consider the educational reasons why a program is established in centralized fashion. Here having all interpreters, teachers, therapists, and students together in an ongoing program which allows staff interaction, accessibility, and provides much

> greater cohesiveness. . . . Whether a particular service or method can feasibly be provided in a specific special education settting [sic] is an administrative determination that state and local school officials are far better qualified and situated than are we to make. Moreover, we believe that when devising an appropriate program for individual students, a school system may consider the feasibility of such a program. RONCKER V. WATER, 700 F.2d 1058, 1063 (6th Dir.), cert.denied, 464 U.S. 864 (1983); DEPARTMENT OF EDUC. OF HAWAII V. KATHERINE D., 727 F.2d. 809, 813 (9th Cir. 1983), cert denied, 471 U.S. 1117 (1985); GILETE V. FAIRLAND BD. OF EDUC.,, 724 F.Supp. 343, 346 (S.D. Ohio 1989), appeal dismissed, 895 F.2d 1413 (6th Cir. 1990).

The Court discussed placement in the least restrictive environment and the regulations on placment [sic], 34 C.F.R. &300.522 & 34 C.F.R. &300.552(a)(3), (c), stating that while the regulations require a school board to take into account the geographical proximity of the placement, there is no absolute obligation on a school board to place a child in his base school.

Section 445 (3) (a) of Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act (R.S. 17:1941 et seq) states that the placement is in the school which the student would normally attend if not exceptional unless the IEP of the student requires some other arrangement and if the placement is not in the school that the student would normally attend, the placement is as close as possible to the student's home. Section 445 (4) of Bulletin 1706 applies to the educational placement of deaf and hard of hearing students and states the following facts will be considered in developing an IEP:

"[sic]1) Communication needs and the student's and family's preferred mode of communication.

2) Linguistic needs.

3) Severity of hearing loss and potential for using residual hearing.
4) Social, emotional, and cultural needs including opportunities for peer interaction and communication.
5) Consideration of curriculum content and method of curriculum delivery."

The Courts have held that it is not a change in educational placement where programs in both schools are under same School Board's jurisdiction, both programs provide substantially similiar [sic] classes and both programs implement the same IEP. WEILL V. BOARD OF ELEMENTARY AND SECONDARY EDUCATION (1991 CA5 La) 231 F.2d 1069. A mere transfer of schools is not a change in educational placement. (1994 La) 875 F.Supp 352. A refusal to modify a child's neighborhood school and placement of the child in another school already modified did not violate the child's right to a free appropriate public education where the other school provides a free appropriate public education. SCHULDT V. MANKATO INDEP. SCHOOL DISTRICT NO. 77 (1991 CA8 Minn) 937 F.2d 1357.

There is a change in placement only where there is a change in the general education program rather than a variation of the program itself. LUNCEFORD V. D.C. BOARD OF ED. (184) 745 F.2D 1577. A change in a child's transporation [sic] route does not significantly alter a child's learning experience and would not be considerated [sic] a change in program. DELEON V. SUSQUENHAAUNA COMMUNITY SCHOOL DISTRICT, (1984, CA 3 Pa) 747 F.2d 149.

Section 445 of the Regulations provide for a continuum of alternative educational settings available to each child in order of restrictiveness as it applies to each child:

1. Instruction in regular classes, including (a) with supplemental aides and services to the student, and/or (b) special education instruction;

2. Instruction in special classes, all or part of the day;
3. Special schools, all or part of the day;
4. Homebound;
5. Instruction in hospitals and institutions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

To determine if the Ascension Parish School Board has provided a free appropriate public education to John Gideon Veazey, the two part inquiry of ROWLEY must be applied to the facts of this case. It must first be determined if the Ascension Parish School Board complied with the statutory procedures with respect to the transfer of the child from his neighborhood (home based) school to a cluster program at another school located in the Parish.

The Ascension Parish School Board is claiming that John Gideon Veazey's transfer to the cluster program at another school is not a change in program, placement or least restrictive environment, but is an administrative decision to better provide services to the cued speech hearing impaired students. The School Board claims that the transfer is a change in site, which is an administrative decision that can be made by the School without notice to the parents.

The Veazey's Due Process Request asked for a hearing pertaining to the issue of the school to be attended by John Gideon Veazey for the 1996-97 school year. The Veazey's are claiming that the Ascension Parish School Board did not comply with the statutory procedures since the transfer was a change in placement.

Oak Grove Primary School, John Gideon Veazey's home based school, is four (4) miles away from his home and Gonzales Primary School, the cluster or centralized school, is seven (7) miles away from his home. The educational placement of John Gideon Veazey at Oak Grove Primary School is a regular education classroom on a regular school campus. The educational placement of John Gideon Veazey at Gonzales Primary School is a regular education classroom on a regular school campus. There is not change in

educational settings. There is no requirement under IDEA or Bulletin 1706 that John Gideon Veazey go [sic] the school closest to his home. The cluster or centralized school site is only three (3) more miles further than his home based school and is located in the Ascension Parish School Board District.

There is no question under the applicable statutes, regulations and jurisprudence that the Ascension Parish School Board does have the authority and discretion to provide a cluster type or centralized program for children with disabilities. John Gideon Veazey requires a cued speech transliterator and the Courts have clearly recognzied [sic] that the Ascension Parish School Board can provide this service in a centralized location. In addition to requiring a cued speech transliterator in the [sic] his classroom, John Gideon Veazey does require a need to auditory traiining [sic] (Exhibits P-6, P-7)

It is the finding of the Hearing Officer that the transfer of John Gideon Veazey to a cluster or centralized program at Gonzales Primary School is not a change in program, placement or least restrictive environment.

It is the finding of the Hearing Officer that Ascension Parish School Board did not violate the statutory procedures by transferring John Gideon Veazey to a cluster/centralized program at a school other than his neighborhood (home based) school.

From examining the exhibits and testimony in this matter, it is clear that the Ascension Parish School Board has provided John Gideon Veazey an [sic] free appropriate public education in both the cluster/central program and at his neighborhood (home based) school. It is the finding of Hearing Officer that John Gideon Veazey has received a free, appropriate public education from Ascension Parish School Board.

The appropriateness of John Gideon Veazey's IEP was not an issue in this case. However, the Veazeys claim that sharing of a cued speech transliterator with another student

and riding the special education bus are changes in their child's IEP.

The Veazey's object to their child sharing a cued speech transliterator with another student and claim this is a change in his IEP. Both the December 1995 IEP, Exhibit P-6, and the December 1996 IEP, Exhibit P-7, include a cued speech transliterator as a modification needed in a regular classroom. There is nothing in the IEP which states that John Gideon Veazey must have his own personal cued speech transliterator. The fact that another hearing impaired child would share a cued speech transliterator would not alter the general educational plan for this child. It is the finding of the Hearing Officer that sharing a cued speech transliterator would not alter the general educational plan for this child and would not deny him a free appropriate public education.

The Veazey's object to their child riding the special education school bus to Gonzales Primary School and claim that this is a change in his IEP. Both the December 1995 IEP, Exhibit P-6, and the December 1996 IEP, Exhibit P-7, list riding the bus as an activity with non-exceptional peers. The Veazey's claim this is a change [sic] his IEP since he would not be interacting with non-exceptional peers during the bus ride. However this change is merely a variation of his transportation to school, it does not alter his learning experience and interaction with non-exceptional [sic] in a regular classroom on a regular campus. it is the finding of the Hearing Officer that sharing a cued speech transliterator would not alter the general educational plan for this child and would not deny him a free appropriate public education.

It is the finding of the Hearing Officer that John Gideon's IEP was formulated to enable him to receive educational benefits and would not prevent or prohibit him from receiving services in a cluster/centralized program.

It is the finding of the Hearing Officer that under the stay put order John Gideon Veazey has received a free appropriate public education from the Ascension Parish School Board while attending Oak Grove Primary.

The Hearing Officer allowed much discretion in the presentation of exhibits and testimony in this case, including information about other hearing impaired children and underlying motives of the Ascension Parish School Board in their decision to cluster the cued speech hearing impaired students. However, much of this testimony was not relevant and did not assist the Hearing Officer in making a decision in this case.

DECISION

It is the decision of the Hearing Officer that the transfer of John Gideon Veazey to a cluster or centralized program at Gonzales Primary School is not a change in placement. There is no evidence that Ascension Parish School Board did not follow the statutory procedures with respect to this transfer.

It is the decision of the Hearing Officer that the Ascension Parish School Board has provided John Gideon Veazey a free appropriate public education.

APPEAL RIGHTS

Any party to a hearing may appeal within fifteen (15) operational days after receipt of the hearing decision by requesting a formal review by the Review Panel.

Submitted by
s/Madeline S. Carbonette
Madeline S. Carbonette
Hearing Officer
December 22, 1997

INDIVIDUALIZED EDUCATION PROGRAM
LOUISIANA DEPARTMENT OF EDUCATION
General Student Information

System: Ascension Parish Schools

Student Name: JOHN G VEAZEY

Meeting Date(s): 10-5-04

DOB: 7/10/88 ID#: 255-79-4588

CONFIDENTIAL DOCUMENT Revised 2004

Individual Evaluation Date: 10/10/03

Homebased School: Dutchtown High

Other School: _____

Primary Exceptionality: Hearing Impairment-Deafness

Secondary Exceptionality: _____

_____

Type IEP: ____ Interim ____ Initial __X__ Review

Grade: 10

IEP Team Participants:*	Signatures
Special Education Teacher:	Gail White Gail White
Regular Education Teacher:	Lloyd Landry
Student:	JOHN VEAZEY John Veazey
Parent(s):	John E. Veazey
	Tonya Veazey

*See block for parent decisions (Placement/Least Restrictive Environment page)

**Official Designee	Signatures/Positions	
of System:	Gwynne Pecue	Asst. Principal
Eval Rep:		
Other(s):	Pamela Gautreau	Transliterator
	Joan M. Sampson	Guidance Counselor
	Patrick L. Hymel – Teacher	Conrad R. Braud/ Principal

**Must be in attendance

GENERAL STUDENT INFORMATION

Include strengths, support needs, parental concerns, evaluation results, progress in general curriculum, statewide assessment results, and consideration of special factors, including transition program needs.

John Veazey is a tenth grade student currently enrolled at Dutchtown High School. John has never repeated any grades and has been served in a general education setting. John scored at the 99th percentile on the Core Total on the ITED (Iowa Test of Educational Development). He also scored in the 99th percentile on the Composite overall level of the ITED. His strengths are in reading comprehension, written language and vocabulary. Linguistically, John is functioning within the superior range for his chronological age.

As indicated in the current evaluation John's needs include continued monitoring services by the Deaf.Ed. teacher. The student's disability is a profound bilateral, sensorineural hearing loss (unaided) which affects his performance in the general education curriculum. He has made satisfactory progress in the general education curriculum by utilizing the following accommodations:

preferential seating, repeated directions as needed and open/closed captioned movies/videos. John achieved 100% of his objectives on his current IEP. John's preferred mode of communication is oral with Cued Speech transliterating services being provided in the educational setting. There are no social or behavioral concerns at this time.

John's parents have concerns that Math is his weakest subject and they believe he can make significant improvement in Math if they know ahead of time when his upcoming Math tests will be so they can help him to prepare. John has developed his own organizational strategy for keeping up with his assignments, tests, projects, etc. John passed all of his course work in the ninth grade with a final 3.89 grade point average.

John wears a 3G processor for a Nucleus 22 cochlear implant unilaterally and audiological results indicate hearing in the normal to mile range for frequencies centered around 250-6000 Hz. John is responsible for his own sound checks and troubleshooting of his cochlear implant equipment while at school, John has used various assistive listening devices, but did not realize enough benefit from them to justify continued use of the ALD. John will undergo a month long trial period using a personal fm system during core classes. John has corrected vision with prescribed contact lenses.

John received speech therapy services in the past school years. However, informal assessment, observation, and teacher interviews revealed that John communicate effectively in a variety of situations, including the classroom and conversations with unfamiliar listeners. John exhibits occasional communication breakdowns; yet, he is able to utilize appropriate strategies to repair those

breakdowns. The results of his most recent reevaluation revealed that his communication deficit no longer interferes with his general education performance; therefore, speech therapy services are no longer warranted. Speech therapy services were terminated at the end of last school year.

John plans to graduate from high school and attend college to pursue a course of study in Biology and Herpetology. This past school year, John extended himself outside of the general education realm by pursuing scholarship possibilities for the future. In doing so, he won first prize in the Gallaudet National Essay Contest for Deaf and Hard of Hearing Students. He took driver's education over the summer and now has a learner's permit. He does not have any 'formal' work experiences at this time. However, he has participated in band activities such as concession stand sales and manning entertainment booths, as well as working on a political campaign. John also completes household chores and is able to manage his own money appropriately.

John continues to qualify for the exceptionality of Hearing Impairment – Deafness. He was dismissed from speech therapy last school year and no longer qualifies for the exceptionality of Speech and Language Impairment – Articulation.

EDUCATIONAL NEEDS

__X__ Academic/Cognitive ____ Self-Help ____ Communication

_____ Motor ____ Behavior ____ Social

_____ Vocational

REEVALUATION COMMENTS Triennial Re-eval is due on or before 10/10/2006.

Copies must be provided to Teacher(s),
Parent, and Central Office

INDIVIDUALIZED EDUCATION PROGRAM
LOUISIANA DEPARTMENT OF EDUCATION

System: Ascension

Student Name: John "Buddy" Veazey

Program/Services Meeting Date(s): December 12, 1995

DOB: 7/10/88 ID#: 255-79-4588

CONFIDENTIAL DOCUMENT Revised 1995

INDIVIDUAL EVALUATION DATE 3/23/95

PRIMARY EXCEPTIONALITY Hearing Impaired (Deaf)

SECONDARY EXCEPTIONALITY(IES) Speech Impaired

HOMEBASED SCHOOL Prairieville Elem.

OTHER SCHOOL _____

GRADE 1st

TYPE IEP __ Interim __ Initial ✓ Review __ Declassified

NOTE: Anything below the line must be blank prior to IEP Conference

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IEP Participants:	Signatures
Teacher(s)	Cheryl Noel
	_____
Student	Buddy Veazey
Parent(s)*	Tonya Veazey

Official	Signatures/Positions
Designee of System Eval. Rep.	Margaret [Illegible], Counselor
	_____
	_____

Other(s) Stacey Poche, MEL CCC-SLP
Leslie Fatherree, Transliterator

*See block for parent decisions (Placement/Least Restrictive Environment page)

ACTIVITIES WITH NON-EXCEPTIONAL PEERS

Check all activities with non-exceptional peers. *If this student's schedule differs* from the regular schedule, indicate the minutes/day of each interaction. Students on a special school campus should have opportunities, at least weekly, for interaction with non-exceptional peers (indicate below).

	minutes/day
✓ Lunch	
✓ Hallway/Lockers	
✓ Recess	
✓ Buses	
✓ Library	
✓ Assemblies	
___ Other	

___ Cocurricular/extracurricular (list)

SPECIAL EDUCATIONAL PROGRAM AND LONG-TERM EDUCATIONAL GOAL (Check one)

✓ Specially Designed Regular Instruction/High School Diploma

___ Alternative to Regular Placement/High School Equivalency Diploma

___ Alternative to Regular Placement/Certificate of Achievement

Comments:

LOUISIANA EDUCATIONAL ASSESSMENT PROGRAM (LEAP)
(For Specially Designed Regular Instruction Only)

Norm-Referenced Test Grade 4 __ 6 __ 9 __
Criterion-Referenced Test Grade 3 __ 5 __ 7 __
Graduation Exit Exam __

MODIFICATION(S) NEEDED FOR LEAP TESTING
(CHECK ALL THAT APPLY)

___Braille ___Transferred Answers ___None
___Large Print ___Extended Time
___Answers Recorded ___Tests Read Aloud except Reading Comprehension
✓ Repeated Directions
___Sign Language Assistance ✓ Individual/Small Group
✓ Other Cued Speech Transliterator Services

EXTENDED SCHOOL YEAR PROGRAM (ESYP)-
Check the ESYP screening date and all applicable criteria

School Year 1995-96:
✓ April 12, 1996 _ Regression-Recoupment _ Employment

School Year 1996-97:
_ April 4, 1997 ✓ Critical Point of Instruction _ Transition

School Year 1997-98:
_ April 17, 1998 _ Self-Injurious Behavior (ESYP)

REGULAR CLASSES
(with non-exceptional students)

___None	✓ Spelling	✓ Physical Education
✓ Reading	✓ Science	___Electives (list)
✓ Writing	✓ Social Studies	_____
✓ English	___Vocational	_____
✓ Math	✓ Art/Music	_____

MODIFICATIONS NEEDED IN REGULAR CLASS
(Check all that apply)

___None	___Communication Assistance	___Transferred Answers
___Oral Testing	✓ Preferential Seating	___Answers Recorded
___Extended Time	___Advanced Organizers	✓ Individual/Small Group Testing
___Tape Recorder	___Large Print/ Brails	✓ Repeated Directions
___Poet Tutor	✓ Auditory Aids	
___Visual Aids	✓ Technological Aids	
✓ Other Cued Speech Transliterator		

STUDENT'S TOTAL INSTRUCTIONAL DAY (Minutes) 330

	Date to Begin	Minutes/ Day	Sessions/ Week	Indiv/ Group	Duration
SPECIAL CLASS	12/13/95	45	5x		1 yr
DIRECT SERVICES					
SPCH/LANG THERAPY	~~12/3/95~~	~~30~~	~~3x~~	~~(1) G~~	~~1 yr~~
ADAPTED P.E.				1 G	
RELATED SERVICES					
SPCH/LANG THERAPY	12/13/95	30 min	3x	(1) G	1 yr

Occupational Therapy	4-28-95	15-30 min	consult 1 x yr	(1) G	1 yr
Cued Speech Trans.				1 G	
				1 G	
Comments	* upon receipt of valid drs. orders				

Special Transportation _ No _ Yes (describe)

CONFIDENTIAL 1995

SITE DETERMINATION FORM

John Veasey (STUDENT) is assigned to Gonzales Primary (SCHOOL) to receive his/her special education services as determined appropriate at his/her IEP meeting on 8/19/96 (DATE). The school system certifies that:

1. This is the school the student would attend if not exceptional.
2. This school and class are chronologically age appropriate for the student.
3. The school selected is accessible to the student for **all** school activities.
4. The classroom is comparable to and integrated with regular classes.

If any of the above statements are not true, an explanation must be given explaining the selection of the school.

Hearing impairment is a low incidence exceptionality and the homebase school does not contain other hearing impaired student using Cued Speech at the 2nd grade level. Gonzalez Primary will provide the student with opportunities to communicate using his chosen mode of communication (Cued Speech) with other age-appropriate hearing impaired students, thereby, enhancing his communication and social skills. The school would also allow for his academic needs to be met. In addition, he will also be fully integrated with age appropriate nondisabled peers and be afforded access to all school activities.

If you have any questions regarding this placement, please contact the Officially Designated Representative at telephone number 621-2521 .

/s/ Barbara M. LeBlanc
OFFICIALLY DESIGNATED
REPRESENTATIVE SIGNATURE

8/19/96
DATE

ED.gov

Welcome to OSEP!

The Office of Special Education Programs (OSEP) is dedicated to improving results for infants, toddlers, children and youth with disabilities ages birth through 21 by providing leadership and financial support to assist states and local districts. The Individuals with Disabilities Education Act (IDEA) authorizes formula grants to states, and discretionary grants to institutions of higher education and other non-profit organizations to support research, demonstrations, technical assistance and dissemination, technology and personnel development and parent-training and information centers.

[LOGO]

The Individuals with Disabilities Education Improvement Act of 2004 was signed into law by President George W. Bush on December 3, 2004. As the nation's special education law, IDEA serves approximately 6.8 million children and youth with disabilities.